

Hague Conference on Private International law

Questionnaire concerning the practical operation of the Convention

Response on behalf of the Central Authority for Northern Ireland

**1) The role and functioning of Central Authorities**

General questions

1. Have any difficulties arisen in practice in achieving communication or co-operation with other Central Authorities in accordance with Article 7 of the Convention?

*(Article 7d) We have, on occasion, experienced some difficulty in securing information about the child's social background.*

*(Article 7f) In some States, funds must be lodged in respect of return travel (for child and respondent) before the Hague Convention proceedings are initiated. Inevitably, this can cause delay.*

*(Article 7i) It has, on occasion, proved difficult to obtain information/progress reports from other Central Authorities (e.g. the assigned case worker is on leave/holiday or answering machines are in use).*

2. Have any of the duties of the Central Authority, as set out in Article 7, raised any problems in practice?

*The Central Authority for Northern Ireland has not encountered any particular difficulties carrying out the duties set out in Article 7.*

Particular questions

3. What measures are taken by your Central Authority or others to secure the voluntary return of a child or to bring about an amicable resolution of the issues (Article 7c)? Do these measures lead to delay?

*The Central Authority in Northern Ireland will instruct a solicitor to act on behalf of an applicant and s/he will issue proceedings immediately. However, if the respondent indicates a willingness to return the child voluntarily, a negotiated settlement will be concluded and form the basis of a consent order. Refining the details of the settlement can involve much time and energy. However, it is often worth the effort as there is an increased likelihood that agreed arrangements will be adhered to.*

4. What measures does your Central Authority take to provide or facilitate the provision of legal aid and advice in Hague proceedings, including the participation of legal counsel

and advisors (Article 7g)? Do these measures result in delays in your own jurisdiction or, where cases originate in your country, in any of the requested jurisdictions?

*In Northern Ireland, legal aid without a means and merits test is available to those who apply under Article 12 of the Convention. Applications for access/contact proceed under the domestic legislation, the Children (Northern Ireland) Order 1995, and legal aid is not automatically available for such proceedings. However, an applicant may qualify for legal aid under the normal means and merits test (i.e. the applicant's financial status and the likelihood of a successful outcome in the proposed proceedings will be assessed). Every effort is made to keep any possible delays to a minimum.*

5. Does your Central Authority represent applicant parents in Hague proceedings? If so, has this role given rise to any difficulties or conflicts, for example with respect to other functions carried out by your Central Authority?

*No, solicitors instructed by the Central Authority for Northern Ireland represent applicants.*

6. What obligations does your Central Authority have, and what measures does it take, to ensure that a child returned to your country from abroad receives appropriate protections, especially where issues of (alleged) abuse or violence has arisen? In particular, does your Central Authority:

a) ensure that appropriate child protection bodies are alerted;

*The Central Authority in Northern Ireland will alert the Social Services if child protection concerns are raised by the Court or the Central Authority in the Requested State.*

b) provide information to either parent in respect of legal, financial, protection and other resources in your area;

*The Central Authority for Northern Ireland will provide information on available services within the jurisdiction. It does not, however, adopt an advisory role in relation to either parent.*

c) facilitate contact with bodies providing such resources;

*See (b) above.*

d) assist in providing any necessary care for the child pending custody proceedings;

*Any necessary care arrangements for the child will be put in place by the Social Services.*

e) provide any other support, advice or information to a parent who accompanies the child on return;

*See (b) above.*

f) provide any assistance in ensuring that undertakings attached to a return order are respected.

*If requested to do so, the Central Authority for Northern Ireland will draw attention to any undertakings.*

7. What arrangements does your Central Authority make for organising or securing the effective exercise of rights of access (Article 7f)?

*The Central Authority for Northern Ireland does not process applications for access, which proceed under the domestic legislation. It can, however, facilitate the appointment of a legal representative who will act on the applicant's behalf. As previously stated, legal aid is not automatically available for access proceedings, although an applicant may qualify under the normal means and merits test.*

In particular, in the case of an applicant from abroad, does your Central Authority:

a) provide information or advice;

*General information and assistance is provided. However, applicants who seek advice on legal matters are encouraged to speak to their solicitor.*

b) facilitate the provision of legal aid or advice;

*Legal aid will only be available if the applicant's income is below the financial threshold and if his/her case is deemed to have a good chance of success.*

c) initiate or assist in the institution of proceedings, where appropriate, on behalf of the applicant;

*As stated above, the Central Authority for Northern Ireland does not process applications for access. The applicant is required to engage his/her own solicitor and may be entitled to legal aid in respect of the application.*

d) assist in ensuring that the terms or conditions on which access has been ordered or agreed are respected;

*Enforcement of terms/conditions will be pursued by the instructed solicitor and legal aid may be available.*

e) assist in cases where modification of existing access provisions is being sought.

*Modification of access provisions will be pursued by the instructed solicitor and legal aid may be available.*

8. Please comment on any developments in relation to the maintenance of statistics concerning the operations of your Central Authority. Has your Central Authority been

able to return to the Permanent Bureau annual statistics in accordance with the Hague standard forms? If not, please explain why.

*The Central Authority for Northern Ireland is able to provide the standard statistical information requested by the Permanent Bureau at the end of 2000. Systems have now been put in place to ensure that statistical information is collected on an ongoing basis and is readily accessible at any given time.*

9. Can you affirm or reaffirm, as the case may be, support for the conclusions reached by the first, second and third Special Commissions.

*The Central Authority for Northern Ireland reaffirms its support for the conclusions reached by the first, second and third Special Commissions.*

10. Would you support any other recommendations in respect of the particular functions which Central Authorities do or might carry out, especially with regard to the matters raised in questions 6 and 7 above?

*The Central Authority for Northern Ireland will consider all practical suggestions, particularly any proposals which would facilitate or enhance the collaborative relationship between Central Authorities.*

**2) Judicial proceedings, including appeals and enforcement issues, and questions of interpretation**

- 1 How many courts and how many judges potentially have jurisdiction to hear an application for the return of a child? If there is more than one level of jurisdiction at first instance, please specify the number of courts and judges for each level.

*All applications for return are heard in the Family Division of the High Court of Justice in Northern Ireland. There are currently 7 High Court judges, one of which is specifically assigned to the Family Division.*

- 2 Do you have any special arrangements whereby jurisdiction to hear return applications is concentrated in a limited number of courts? Are such arrangements being contemplated?

*See response to question (2)1 above.*

- 3 What measures exist to ensure that Hague applications are dealt with promptly (Article 7) and expeditiously (Article 11) in particular:

- a is it possible for the application to be determined on the basis of documentary evidence alone?

*The Court has a discretion to admit oral evidence. However, the need for a summary and speedy procedure is recognised and oral evidence is admitted sparingly.*

- b what special measures/rules exist to control or limit the evidence (particularly the oral evidence) which may be admitted in Hague proceedings?

*Applications usually proceed by way of affidavit (i.e. sworn written statement) and oral evidence is rarely taken.*

- c who exercises control over the procedures following the filing of the application with the court and prior to the court proceedings, and how is the control exercised?

*Prior to hearing, the instructed solicitor will progress the application by preparing any required documentation in conjunction with the applicant and liaising with the court administration to secure a prompt date for hearing. The Central Authority for Northern Ireland assumes a monitoring role and is kept informed of developments.*

- d what appeal is possible from the grant or refusal of a return application, within what time limits do appeals operate, on what grounds and subject to what limitations?

*An appeal lies from the High Court to the Court of Appeal in Northern Ireland, which will normally be comprised of 3 judges. The notice of appeal must specifically state what is being challenged and why it is being challenged (e.g. the judge has misdirected himself in law/failed to take proper account of a particular fact). However, the Court of Appeal can go beyond the grounds of appeal and is free to review parts of the decision which have not been put in issue by the parties to the appeal.*

*Ordinarily, the notice of appeal must be served on the other parties within 6 weeks of the judgment. However, this time period can be extended by the Court or with the written consent of the respondent.*

*In rare cases a further appeal to the House of Lords may be sanctioned and special arrangements are in place to ensure that such an appeal proceeds expeditiously.*

- 4 In what circumstances, and by what procedures/methods, will a determination be made as to whether a child objects to being returned?

*The Court will wish to establish that the child is of sufficient age and understanding to have his/her views represented and will usually direct the Social Services to prepare a written report in respect of the child and the alleged objections.*

*A designated Social Worker will speak to the child and prepare the report, which is then submitted to the Court. However, on rare occasions, the Court may also invite the designated Social Worker to give oral evidence of his/her findings.*

*If appropriate, the judge may also speak to the child.*

In what circumstances in practice will the objections of the child be held to justify a refusal to return? (Please indicate the statutory basis, if any.)

*Each case turns on its own facts. Particular consideration will be given to the age and understanding of the child and whether the abducting parent is exerting any undue influence.*

- 5 Where the person opposing return raises any other defences under Article 13 or Article 20, what are the procedural consequences? What burden of proof rests on the defendant? Does the raising of defences under Article 13 or 20 in practice lead to delay? What measures, if any, exist to reduce such delay to a minimum?

*The courts have adopted a narrow approach to Article 13 defences and, as a result, they are not easily established by the respondent, who bears the burden of proof.*

*An Article 13(a) defence will ordinarily be resolved by way of the affidavit evidence, which helps to minimise any delays.*

*An Article 13(b) defence will invariably result in a welfare report. Every effort is made to ensure that such reports are produced promptly and that any issue is speedily resolved.*

- 6 Please specify the procedures in place in your jurisdiction to ensure that return orders are enforced promptly and effectively? Are there circumstances (apart from pending appeals) in which execution of a return order may not be effected? Do return orders require separate enforcement proceedings? Is there appeal from such proceedings? Are such enforcement procedures routinely invoked, and are they successful in achieving the enforcement of return orders?

*Non-compliance with a return order renders the respondent liable to punishment for contempt of court. There is no summary power for the police or any court official or other person to force compliance and the only way of inducing compliance is the threat of being summoned to the Court and punished for disobedience. If contempt is proved, the relevant party could be committed to prison or fined. However, for the most part, return orders are complied with and the enforcement procedure is rarely invoked.*

*The execution of an order may be delayed if relevant undertakings/conditions have not been complied with.*

*Decisions made in enforcement proceedings may be appealed.*

- 7 Would you support any of the following recommendations?
- a) Calling upon States Parties to consider the considerable advantages to be gained from a concentration of jurisdiction in a limited number of courts.

*Yes. The Central Authority for Northern Ireland believes that the concentration of jurisdiction offers the prospect of judicial and legal specialisation which facilitates the effective and efficient processing of applications.*

- b) Underscoring the obligation of States Parties to process return applications expeditiously, and making it clear that this obligation extends also to appeal procedures.

*Yes. The Central Authority for Northern Ireland supports the re-iteration of the "promptness principle".*

- c) Calling upon trial and appellate courts to set and adhere to timetables that ensure the speedy determination of return applications.

*Yes. See above.*

- d) Calling for firm judicial management, both at trial and appellate levels, of the progress of return applications.

*Yes. See above.*

- e) Calling upon States Parties to enforce return orders promptly and effectively.

*Yes.*

- f) Recommending that the “grave risk” defence under Article 13 should be narrowly construed.

*This is a matter for judicial construction and it would not be appropriate for the Central Authority for Northern Ireland to comment. However, experience shows that Article 13 is narrowly construed in this jurisdiction.*

- g) Proposing any other measures (please specify) to improve the efficiency and speed with which applications are processed and orders enforced.

*The Central Authority for Northern Ireland would welcome proposals for streamlining and harmonizing procedures.*

- 8 Please indicate any important developments since 1996 in your jurisdiction in the interpretation of Convention concepts, in particular the following:

- rights of custody (Article 3a and 5a);
- habitual residence (Article 3a and Article 4);
- rights of access (Article 5b)
- the actual exercise of rights of custody (Article 3b and Article 13a)
- the settlement of the child in its new environment (Article 12);
- consent or acquiescence to the removal or retention of the child (Article 13a);
- grave risk (Article 13b);
- exposure to physical or psychological harm (Article 13b);
- intolerable situation (Article 13b);

- fundamental principles relating to the protection of human rights and fundamental freedoms (Article 20).

*We understand the Central Authority for England and Wales has highlighted a number of important developments. These would also be relevant to this jurisdiction, as the High Court in Northern Ireland pays regard to earlier decisions in England and Wales.*

**(3) Issues surrounding the safe and prompt return of the child (and the custodial parent, where relevant)**

- 1 To what extent are your courts, when considering a return application, entitled and prepared to employ “undertakings” (ie promises offered by, or required of the applicant) as a means of overcoming obstacles to the prompt return of a child? Please describe the subject-matter of undertakings required/requested. At what point in the return proceedings are possible undertakings first raised, and how?

*The Court is prepared to accept undertakings but recognises that these should be limited to what is necessary to achieve the safe return of the child. Most often, undertakings will be proposed by either party’s legal representative.*

- 2 Will your courts/authorities enforce or assist in implementing such undertakings in respect of a child returned to your jurisdiction? Is a differentiation made between undertakings by agreement among the parties and those made at the request of the court?

*The courts in Northern Ireland will consider undertakings (whether made between the parties or at the request of a court) in respect of a child returned to this jurisdiction.*

- 3 To what extent are your courts entitled and prepared to seek or require, or, as the case may be, to grant safe harbour orders or mirror orders (advance protective orders made in the country to which the child is to be returned) to overcome obstacles to the prompt return of a child?

*Experience suggests that the concept of safe harbour/mirror orders is still in its infancy in this jurisdiction. However, any proposals which assist in the prompt return of the child will be considered.*

- 4 Is consideration being given to the possible advantages 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, in providing a jurisdictional basis for protective measures associated with return orders (Article 7), in providing for their recognition by operation of law (Article 23), and in communicating information relevant to the protection of the child (Article 34)?

*The British Government is considering ratification of this Convention.*



- 5 Have you experience of cases in which questions have arisen as to the right of the child and/or the abducting parent to re-enter the country from which the child was abducted or unlawfully retained? If so, how have such issues been resolved?

*No.*

- 6 Please comment on any issues that arise, and how these are resolved, when criminal charges are pending against the abducting parent in the country to which the child is to be returned.

*We have not encountered any problems in this regard.*

- 7 Please comment on any experience as a requesting or a requested state, of cases in which the deciding judge has, before determining an application for return, communicated with a judge or other authority in the requesting State and, if so, for what purposes? What procedural safeguards surround such communications?

*The Central Authority for Northern Ireland is not aware of any such communications having taken place.*

- 8 Has an appointment been made in your country of a judge or other person competent to act as a focus or channel for communication between judges at the international level in child abduction/access cases?

*No.*

- 9 Where a child is returned to your country, what provisions for legal aid and advice exist to assist the accompanying parent in any subsequent legal proceedings concerning the custody or protection of the child?

*The accompanying parent can apply for legal aid for subsequent legal proceedings. The application for legal aid will be assessed by reference to the merits of the case and the accompanying parent's financial status.*

- 10 Where a custody order has been granted in the jurisdiction of, and in favour of, the left behind parent, is the order subject to review if the child is returned, upon the application of the abducting parent?

*Yes, the abducting parent could seek to alter the order under the Children (Northern Ireland) Order 1995.*

- 11 Would you support any of the following recommendations?

- a that Contracting States should consider ratification of or accession to 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, to provide a basis for jurisdiction, recognition and enforcement, and co-operation in respect of measures of protection of a child which are attached to return orders.

*The British Government is considering ratification of this Convention.*

- b that Contracting States should provide swift and accessible procedures for obtaining, in the jurisdiction to which the child is to be returned, any necessary protective measures prior to the return of the child.

*Yes.*

- c that Contracting States should take measures to ensure that, save in exceptional cases, the abducting parent will be permitted to enter the country to which the child is returned for the purpose of taking part in legal proceedings concerning custody or protection of the child.

*Yes.*

- d that Contracting States should provide a rapid procedure for the review of any criminal charges arising out of a child's abduction/unlawful retention by a parent in cases where the return of the child is to be effected by a judicial order or by agreement.

*Yes.*

- e that Contracting States should nominate a judge or other person or authority with responsibility to facilitate at the international level communications between judges or between a judge and another authority.

*Yes.*

- f that the Permanent Bureau of the Hague Conference on Private International Law should continue to explore practical mechanisms for facilitating direct judicial communications, taking into account the administrative and legal aspects of this development.

*Yes.*

**(4) Procedure for securing cross-frontier access/contact between parent and child**

- 1 What provisions for legal aid/advice/representation in respect of a foreign applicant for an access order exist in your jurisdiction?

*Applicants will be subject to the usual means and merits tests.*

- 2 On what basis do your courts at present exercise jurisdiction to:

- a grant and
- b modify access/contact orders

*The grant/modification of access/contact orders is governed by the Children (Northern Ireland) Order 1995 and the welfare of the child is the court's paramount consideration.*

- 3 What provisions exist for the recognition and enforcement in your jurisdiction of foreign access orders, in particular where the order has been made by a court or other authority of the country of the child's habitual residence? In this context is consideration being given to 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?

*An order can only be recognised and enforced if it is made in a country which is a signatory to the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children.*

*Consideration is being given to the implementation of the 1996 Hague Convention.*

- 4 What, if any, provision exists to ensure that cross-frontier access applications (including appeals) are processed expeditiously?

*Applications for access are dealt with under the Children (Northern Ireland) Order 1995 and are governed by the court's timetable.*

- 5 What facilities/procedures are in place to promote agreement between parents in international access/contact cases?

*The parties' legal representatives will often explore the possibility of an agreed settlement.*

- 6 Do your courts in practice accept a presumption in favour of allowing access/contact to the non-custodial parent?

*The court's paramount concern is the welfare of the child and there is no legal presumption in favour of allowing access to the non-custodial parent.*

- 7 What conditions are likely to be imposed on access in respect of a non-custodial abducting parent?

*The access arrangements will include conditions which are designed to offset the possibility of a further abduction, such as supervised access at a known address or surrendering of the non-custodial parent's passport.*

- 8 What information concerning services and what other facilities are available to overseas applicants for access/contact orders?

*The Central Authority for Northern Ireland can provide applicants with information on available services/facilities within the jurisdiction.*

- 9 What problems have you experienced and what procedures exist in your country as regards co-operation with other jurisdictions in respect of:
- a the effective exercise of rights of access in your/in the other jurisdiction;
  - b the granting or maintaining of access rights to a parent residing abroad/in your jurisdiction;
  - c the restriction or termination of access rights to a parent residing abroad/in your jurisdiction.

*The European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children offers the prospect of the recognition and enforcement of rights of access. However, the parties may have conflicting views about the precise nature of those rights and clarification may be required, leading to delay.*

- 10 What, if any, measures are available to your courts to help guarantee adherence by parents to access conditions (eg financial guarantees, surrender of passports)

*see response to question (4)7 above*

- 11 How in practice are access orders enforced?

*The comments in the first paragraph of question(2) 6 above apply equally in this context.*

- 12 Would you support recommendations in respect of any of the particular issues raised in the preceding questions? If so, please advise.

*The Central Authority for Northern Ireland will consider any recommendations which enhance access arrangements and offset possible abductions.*

**(5) Securing State compliance with Convention obligations**

- 1 Please comment upon any serious problems of non-compliance with Convention obligations of which your authorities have knowledge or experience and which have affected the proper functioning of the Convention.

*The Central Authority for Northern Ireland has not encountered any serious problems of non-compliance. Other difficulties have been outlined at question (1)1 above.*

- 2 What measures, if any, do your authorities take, before deciding whether or not to accept a new accession (under Article 38), to satisfy themselves that the newly acceding State is in a position to comply with the Convention obligations?

*The Foreign and Commonwealth Office check with their posts abroad whether the acceding State has established an effective central authority, has an adequate social services system and a compatible legal system.*

- 3 Would you favour the drawing up of a standard questionnaire to be submitted by Contracting States to each newly acceding State with a view to assisting them to decide whether or not to accept the accession? What questions would you include?

*The Central Authority for Northern Ireland would support the introduction of a standard questionnaire/best practice guide. Relevant areas for consideration would be the role of the Central Authority, court structure, enforcement procedures, availability of legal representation.*

- 4 Are you in favour of an increase in the number of Special Commissions (or similar meetings) to review the practical operation of the Convention? Would you also favour the idea that additional Special Commissions should review particular aspects of the operation of the Convention (for example, the problems surrounding the protection of rights of access, or the issues that arise when allegations of abuse or domestic violence are raised in return proceedings or the practical and procedural issues surrounding direct communications between judges at the international level, or the enforcement of return orders by Contracting States)?

*A “referral mechanism” would be a useful way of identifying topical issues or common problems. The frequency of the Special Commissions or similar meetings would then be “demand driven”.*

- 5 Are there any other measures or mechanisms which you would recommend:
- a to improve the monitoring of the operation of the Convention;
  - b to assist States in meeting their Convention obligations;
  - c to evaluate whether serious violations of Conventions have occurred?

*The Central Authority for Northern Ireland would support some form of compliance monitoring and, where possible, the harmonisation of procedures.*

**(6) Miscellaneous and general**

- 1 Have you any comments or suggestions concerning the activities in which the Permanent Bureau engages to assist in the effective functioning of the Convention, and on the funding of such activities.

*The Central Authority for Northern Ireland would support an enhanced research/supervisory role for the Permanent Bureau and the exploration of any associated budgetary/resource issues.*

- 2 Are there additional ways in which the Permanent Bureau might provide assistance? Do you favour the preparation of a list of potential Permanent Bureau functions and tasks that could only be performed if the Permanent Bureau were to receive additional financial and human resources either through approval of an increased budget or through voluntary contributions to accounts set aside for that purpose?

*The Central Authority for Northern Ireland would support the exploration of possible functions and resource issues.*

- 3 Would you favour a recommendation that States Parties should, on a regular annual basis, make returns of statistics concerning the operation of the Convention on the standard forms established by the Permanent Bureau, and that these statistics should be collated and made public (for example on the Hague Conference website) on an annual basis?

*Yes.*

- 4 Would you favour a recommendation supporting the holding of more judicial and other seminars, both national and international, on the subject matter of the Convention?

*Yes.*

- 5 Are there any particular measures which you would favour to promote further ratifications of and accessions to the Convention?

*The UK favours drawing up membership criteria. These are vital to ensure that the operation of the Convention is not weakened by countries who are unable to fulfil their obligations. The UK supports the negotiation of targeted bilateral agreements with non Hague states which have incompatible legal systems.*

- 6 Please provide information concerning any bilateral arrangements made with non-Hague states with a view to achieving all or any of the objectives set out in Article 1 of the Convention.

*The Central Authority for Northern Ireland is aware of the proposed UK bilateral arrangement with Egypt in the form of a non-binding Memorandum of Understanding and will be subject to it.*

- 7 Do you have any comments on the following proposition:

“Courts take significantly different approaches to relocation cases, which are occurring with a frequency not contemplated in 1980 when the Hague Child Abduction Convention was drafted. Courts should be aware that highly restrictive

approaches to relocation can adversely affect the operation of the Hague Child Abduction Convention.”

*The Central Authority for Northern Ireland recognises that a restrictive approach to relocation could result in parents abandoning the jurisdiction without seeking the prior permission of the court. However, in Northern Ireland, each relocation case turns on its own facts and the determinative factor is the child’s best interests.*