

Hague Conference on Private International law

Questionnaire concerning the practical operation of the Convention
and views on possible recommendations

Response on behalf of the Central Authority for England & Wales

In preparation for the Special Commission the Central Authority for England and Wales requests the Permanent Bureau at The Hague to invite ministers to attend one day of the Special Commission, in particular to attend the closing or opening sessions.

The Central Authority for England and Wales urges the Permanent Bureau to invite judges of sufficient authority to speak for their national judiciaries to attend the judicial part of the Special Commission.

The Central Authority for England and Wales endorses the Permanent Bureau's suggestion to lengthen the Special Commission in order to give delegates more time to look strategically at the Convention.

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 7a) Delays can occur in countries where the police, who may have more pressing priorities, are relied upon to search for and locate abducted children.

(Article 7e) The absence of documents relating to the relevant law supporting rights of custody when applications are submitted can hold-up the commencement of proceedings in the Requested State.

(Article 7f) Concerns are raised in cases delayed by Requested States requiring funding from applicants for return travel (for child and respondent) before Hague Convention proceedings initiated.

The Central Authority for England & Wales notes that in some instances Requested States are slow to start Convention proceedings and recommends that States Party should take steps to ensure that Central Authorities have adequate financial and staff resources to enable Convention procedures to be accelerated.

(Article 7i) Communication between Central Authorities can break down when progress reports are not provided. Ideally Requested States should be encouraged to provide progress reports every month for an active case. England and Wales would support better communication between Central Authorities, including providing information on legal aid, judicial systems and social services.

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 England & Wales has not encountered any 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?

Solicitors in England & Wales instructed on behalf of applicants issue proceedings immediately. If the respondent indicates a willingness to return a child voluntarily, proceedings are concluded with a consent order. Outside the Central Authority the Foreign and Commonwealth Office and Lord Chancellor's Department will put parents in touch with "reunite", the child abduction charity, if cases come to their notice, who can provide support.

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 the jurisdiction of England & Wales legal aid without a means and merits test is available to those who apply under Article 12 of the Convention. Legal aid for Article 21 (access) applications is subject to means and merits tests. Delays are sometimes experienced in respect of access applications when the solicitor sends legal aid application forms back and forth to the foreign applicant for further information. Efforts are currently ongoing within the Central Authority for England & Wales to lessen these delays. We are currently considering a proposal that the Central Authority assist applicants in completing legal aid forms to shorten the process.

In cases that originate in England & Wales, legal aid processes can cause delays in the Requested State, in particular in access cases.

The Central Authority for England & Wales recommends that States Party should take steps to ensure that applicants in Hague proceedings are provided promptly with experienced legal representation, where possible at the expense of the requested State.

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?

Solicitors, instructed by the Central Authority for England & Wales, represent applicants. The Central Authority is based in the office of the Official Solicitor. The Official Solicitor has a range of functions, including representing children and the mentally ill in civil litigation. Any perceived conflict with the Official Solicitor's function of representing children will disappear when the Children And Family Court

Advisory And Support Service (CAFCASS) takes over representing children in England & Wales on 1 April 2001.

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 will always alert the appropriate child protection bodies (eg social services who investigate child protection matters) when 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 England & Wales provides an information sheet to be made available to respondent parents, giving details of legal help and representation, financial support, accommodation and counselling services.

c) facilitate contact with bodies providing such resources;

See (b) above.

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

The Central Authority for England & Wales will alert the relevant Social Services department to take the appropriate protective action.

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.

The enforcement of undertakings is primarily the responsibility of the lawyers. The difficulty is that the returning parent's eligibility for legal aid depends on a means and merits test. The Central Authority may refer the parent for help to and NGO such as reunite.

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 England & Wales arranges for a solicitor experienced in family law and Hague Convention proceedings to represent the applicant and to apply for legal aid where necessary.

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

- a) provide information or advice;

Yes. General information is provided about the court process. Applicants are encouraged to ask their solicitor about legal matters.

- b) facilitate the provision of legal aid or advice;

Legal aid is only available provided the applicant's income is below the financial threshold imposed by the legal aid board 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;

The application for access will be given to an experienced family law solicitor who will initiate the proceedings on behalf of the applicant. The applicant may be entitled to legal aid (see above) for this service.

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

Yes through an instructed solicitor

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

Yes. A solicitor will be instructed to assist in these cases. The applicant may be entitled to legal aid for this service.

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 England and Wales is able to provide the standard statistical information requested by the Permanent Bureau at the end of 2000. Statistical collection within the Central Authority has been adapted to ensure that information will continue to be available annually in the requested format.

The Central Authority for England and Wales would support a recommendation that Central Authorities should have the ability to comply with requests by the Permanent Bureau for the annual provision of standard statistical information.

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 England and Wales 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 England & Wales will consider all practical suggestions. In particular, States Party should find ways to improve liaison and co-operation between Central Authorities and to ensure their adequate financial and staff resources.

States Party should draw up a Code of Best Practice for the Hague Convention.

States Party should devise and introduce collaborative measures whereby the welfare interests of children returned under the Convention (and those of any accompanying adult) may be protected, pending decisions and protective measures taken by the judicial or administrative authorities of the State of the child's habitual residence. Where risk of harm to the child is perceived the central authority should promptly notify the appropriate child protection authority.

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 High Court in London by a maximum of 18 judges.

- 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 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?

Oral evidence at the final hearing is the exception rather than the rule. It is not ordinarily necessary to hear oral evidence to consider an Article 13 defence as it is not consistent with the summary nature of a procedure which is neither designed nor intended to decide the detail of issues between the parents. Where, however, the issue is consent or acquiescence and the written evidence appears to be evenly-balanced oral evidence may be heard.

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

The parties may file affidavit evidence but there is no right to give oral evidence under the relevant Rules.

- 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?

Judges control the trial process by case management. The Central Authority for England & Wales has influence over the procedures following the filing of the application with the court and prior to the court proceedings, through the solicitors instructed. The applicant gives instructions to the solicitor but the Central Authority exerts influence through progress chasing.

- 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 is only possible if permission is granted by the trial judge or by the Court of Appeal. If permission is granted, the progress of the appeal is controlled by the Supervising Lord Justice. An appeal is possible if the judge has misdirected himself in law or failed to give sufficient weight to a particular aspect of a case. The rule for hearing appeals is flexible but Hague cases are given priority. Ordinarily an appeal will be determined within 6 weeks of the grant of permission. The time for notice of appeal is 14 days. Two weeks later legal arguments have to be filed at court. Appeals are normally heard by a court presided over by 3 judges. A specialist family judge will be on the panel. In rare cases a further appeal to the House of Lords may be sanctioned. In that event special arrangements have been made to ensure the expedited determination of any second appeal.

- 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's first recourse would be to call upon the experienced officers of the Court Welfare Service. Normally a report will be directed on the specific question of the child's objections and to what extent he has attained an age and a sufficient degree of maturity for his views to be taken into account. Usually the child is brought for a meeting with the welfare officer, who, if time permits, files a written report, failing which he will make it orally at the final hearing.

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.)

This depends on the age and understanding of the child and whether the views expressed are genuine. For example, if the child's objection is motivated by the influence of the abducting parent, who may be vehemently opposed to any return, little or no weight will be attached to it.

- 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 burden of establishing an Article 13 defence rests on the defendant. By closely defining Article 13b the court has made it almost impossible to argue such a defence successfully. The judge restricts evidence so that the case is not delayed.

Article 13A defences – again the scope for argument is limited. By raising an argument however the court will be required to hear it but it does not lead to substantial delay.

Child's objections: the English court recognises that where there is a defence raised some investigation will have to be undertaken. The court does not instruct a guardian or psychiatrist to do this but to uses the services of the court welfare officers who are based in the High Court. The benefit of using court welfare officers is that they are familiar with the Hague Convention and the narrow test established under it; they are based in the same court where the proceedings are heard; they can interview a child at very short notice (sometimes on the same day as the hearing) and report orally.

- 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?

Failure to comply with an order means the defendant is in contempt of court. The court has wide powers to ensure that orders are complied with including, but not limited to, imprisonment of the defendant, the removal of the child by the police or Tipstaff (officer of the court). If the child is not returned the abducting parent will be summoned to appear in court. If that fails the defendant will be ordered to produce the child at a certain time and date. If that fails the Tipstaff will be ordered to bring the child to court by which time the applicant parent will have arrived in the UK to accompany the child to its habitual residence.

The execution of an order may not be effected if certain undertakings were not complied with despite being a condition of the order.

Return orders do not require separate enforcement proceedings. They are dealt with by the same judge within the same set of proceedings. They could be appealed subject to the parent having the grounds to do so. Experience shows enforcement procedures are rarely invoked but when they are they are successful.

- 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 England and Wales recommends that States Party should consider limiting the number of courts designated to hear abduction cases and setting up specialist groups of judges and/or lawyers to deal with cases of international child abduction in their jurisdiction.

- 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 England and Wales recommends that effective steps should be taken to co-ordinate and accelerate procedures of Central Authorities and judicial authorities (including appellate procedures) in States Party and to prioritise applications under the Convention.

- 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. This underscores the need for specialist judiciary concentrated in a limited number of courts/tribunals.

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

Yes. The Central Authority for England and Wales recommends that States Party should ensure that decisions are speedily and effectively enforced.

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

This is a matter for judicial construction and accordingly not apt for negotiation or discussion between central authorities. Even discussion between judges that led to consensus would have no binding effect.

- 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 England & Wales proposes that all States Party consider the feasibility of introducing a fast track system for appeals in Convention cases.

The Central Authority for England & Wales recommends that States Party find concrete ways to improve training for all judges dealing with Hague cases.

The Central Authority for England & Wales also recommends that the police be trained about abduction in order to help prevent cases and to improve effectiveness in handling and enforcing return orders.

- 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);

The English courts have developed a flexible approach to rights of custody. De facto custodial persons are likely to be deemed to have inchoate rights of custody (see Re: O (Child Abduction: Custody Rights) [1997] 2FLR 702 and Re W; Re B (Child Abduction: Unmarried Father) [1998] 2 FLR 146

- habitual residence (Article 3a and Article 4);
There is an acceptance that parties can have different habitual residences at different times.
- rights of access (Article 5b)
Rights of access depend on separate consideration of domestic proceedings being brought in England. There is no direct enforcement through the Convention.
- the actual exercise of rights of custody (Article 3b and Article 13a)
Judgment is pending on a case about the exercise of rights of custody
- the settlement of the child in its new environment (Article 12);
There is a growing development that where a parent abducts a child and goes into hiding the abducting parent cannot rely on the period of time he/she has been missing as being a time of settlement.
- consent or acquiescence to the removal or retention of the child (Article 13a);
There has been a development in the law that consent does not have to be in writing. There is a growing tendency for the English court to hear oral evidence on the issue of consent (see Re: K (Abduction: Consent) [1997] 2 FLR 212)
- grave risk (Article 13b);
The court has re-emphasised the fact that a high standard of proof is needed to establish grave risk. The evidence must be weighty and it is a difficult hurdle to overcome (see Re:C (Abduction: Grave Risk of Physical or Psychological Harm) [1999] 2 FLR 478) and also Re: T (Abduction: Child's objections to Return) [2000] 2 FLR 192) (Both Court of Appeal cases)
- exposure to physical or psychological harm (Article 13b);
see above
- intolerable situation (Article 13b);
see above
- fundamental principles relating to the protection of human rights and fundamental freedoms (Article 20).
In October 2000 the Human Rights Act 1998 came into force in England and Wales. Where there is an unresolved issue of law the court would look to the principles of the Human Rights Act to fill the gap which could have implications in Hague cases.

(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 English court is prepared to employ undertakings but accepts that they should be limited:- as to their subject matter, to the minimum necessary to carry the child safely back to the door of the courts of its home jurisdiction; and as to duration to make it clear to the parties and to that court that the undertakings are only intended to run until

the home court is seized of an application to determine the child's future. The possibility of undertakings are usually raised at the final hearing by the parties' legal representatives.

- 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 England and Wales enforce undertakings in respect of a child returned to this jurisdiction. There is no differentiation made. Parties should try to reach agreement about undertakings before the final hearing (see Re M (Abduction: Intolerable Situation) [2000] 1 FLR 930

- 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?

The English court is entitled and prepared to grant mirror orders to assist in the prompt return of the child (see Re: P (A Child: Mirror Orders) [2000] 1 FLR 435).

- 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?

In one case involving an abduction from New Zealand the abducting parent's visa had expired whilst in England. The parent's solicitor contacted the New Zealand Embassy in London and a new visa was re-issued to allow the parent to return with the child.

- 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.

If there are pending criminal proceedings abroad issued by the left behind parent the court will seek an undertaking from that parent not to pursue the proceedings. If it is the state that has initiated the proceedings it is outside the left behind parent's control to drop the proceedings.

The USA has an initiative to introduce the Significant Public Benefit Parole Visa which provides returning parents who are unable to obtain a regular visa due to criminal

charges, the opportunity to return to the USA on a limited visa. The purpose of this special visa is to allow the returning parent the opportunity to stay in the USA long enough to have custody issues resolved.

Judge to judge contact may also assist (see Question 7 below).

- 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?

English judges have contacted judges abroad. There is no rule to the effect that the judge will consult with the parties prior to initiating a communication with a judge in another jurisdiction. Nor is there any rule that the judge must relay the content of his conversation to the parties. Whilst the involvement of the parties may often be sensible it should remain a matter for the discretion of the judge (see Re: M&J (Abduction: International Judicial Collaboration) [2000] 1 FLR 803.

- 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?

Lord Justice Thorpe has been nominated to initiate and carry forward the creation of an international network of liaison judges.

- 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 and legal aid granted depending on 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?

If a custody order was made and the abducting parent was not party to the proceedings (ie ex parte) that parent would be advised to instruct a solicitor in his/her country of habitual residence to apply for a hearing to review the order. If the custody order was made with both parents present the same advice would be given to see if the order could be altered in any way.

- 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?

Foreign applicants are not entitled to automatic legal aid when applying for an access order. Applicants are granted legal aid if their income falls below the threshold established by the Legal Services Commission.

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

- a grant and
- b modify access/contact orders

Applications for access/contact orders in England and Wales may be made under s8 of the Children Act 1989. The welfare of the child is the paramount consideration. The jurisdictional basis is complex but is essentially governed by the Family Law Act 1986. The court may assume jurisdiction on the basis of either existing matrimonial proceedings, or habitual residence, or even actual presence, but it is likely to decline jurisdiction if the child is habitually resident in another country.

- 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 signatory to the Luxembourg Convention on the Recognition of Custody Rights.

However, in the absence of Convention rights the courts of this country would ordinarily afford great respect to access orders made by the court of the country of the child's habitual residence as a matter of comity.

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 domestic legislation ie the Children Act 1989. The processing of such applications is governed by the court's timetable.

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

Mediation services are available. Reunite will shortly undertake a pilot mediation scheme to see how effective such services are in these cases.

- 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. There is no legal presumption in favour of allowing access to the non-custodial parent. However to put that in perspective out of 41,000 domestic contact cases issued in England and Wales last year only 700 were refused.

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

Access would almost certainly have to be supervised and take place at a known address; the non-custodial parent's passport would have to be surrendered and he/she might have to lodge a bond (money) with the court.

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

The Central Authority for England and Wales would provide similar information to that contained in its Information Sheet (see question 1 (6)(b)).

- 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;

If an order is registered under the European Convention in this jurisdiction the court is able to vary the terms of the order if there are grounds to do so. In non European Convention cases the court can order a full investigation by a court welfare officer into the family background. In order to investigate the family background of the parent abroad the court will seek the help of International Social Services (ISS) as there are no resources to send the court welfare officer to visit the left behind parent. This often leads to delay as it usually takes a while for ISS to report.

- b the granting or maintaining of access rights to a parent residing abroad/in your jurisdiction;

see above

- c the restriction or termination of access rights to a parent residing abroad/in your jurisdiction.

see above

- 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 question 7 above

- 11 How in practice are access orders enforced?

Where an application to enforce access rights is made under Article 21 the Central Authority is only required to make arrangements for English solicitors to institute proceedings under s8 of the Children Act. It may be better for the applicant to rely on the Luxembourg Convention. It is generally open to the courts to fine or imprison those who fail to comply with its orders. Imprisonment

of the custodial parent is very much a last resort in family proceedings as it is generally not in the best interests of any child concerned. The Children Act Sub Committee is reviewing the issue of enforcement and is currently working on a consultation paper on the facilitation and enforcement of contact. This will be available in the spring and the consultation will be completed in the summer. Courts in England and Wales have experienced difficulty in dealing with a small number of intractable contact cases. Sometimes the parties are encouraged jointly to instruct a psychiatrist or psychologist to interview and report. Rarely the child will be given party status himself and represented by the Official Solicitor (The Children and Family Court Advisory and Support Service from April 2001) in an effort to break the deadlock particularly where the child is refusing contact but may be unduly influenced by the custodial parent.

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

States Party need to have an effective mechanism in place so that if the court orders the child should not be returned, access should be determined within those proceedings. Left behind parents should also be granted access (without prejudice) pending the outcome of the return application.

(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.

There have been problems with countries that have no enforcement procedure and no central authority. There are also problems when the courts are slow to process applications.

- 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 has 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 England & Wales believes it would be helpful if an acceding country could be given guidance by the Permanent Bureau on what would need to be in place before becoming a signatory. The Permanent Bureau

could also suggest that acceding countries contact states party for advice and support in this regard. States should, as a pre-requisite to accession, demonstrate a reasonable capacity to comply with the provisions of the Convention and perform its obligations. The Central Authority, therefore, believes the Special Commission should compile a questionnaire to send to countries wishing to accede to the Convention. The Permanent Bureau could evaluate the responses to determine whether the country meets the necessary criteria to become a member state. The remit of the Permanent Bureau could be expanded to cope with this new role. Questions that could be included in the questionnaire are: is your legal system based upon the Shari'a or Islamic law; have you established a central authority; how would it deal with an application under the Convention; what provisions do you have in place to monitor and protect the welfare of an abducted child.

- 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)?

The Special Commission might lose its impact if it took place on a more frequent basis. There is a danger that fewer countries would attend more frequent meetings and the whole point of the Special Commission would be lost. However the UK supports the holding of other seminars on the subject matter of the Convention.

- 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 England & Wales believes that for the Convention to be effective an appropriate system for monitoring should be set up through the Permanent Bureau to ensure that signatories perform their duties.

(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 England and Wales believes that for the Convention to be effective States Party should consider increasing the financial and staff resources available to the Permanent Bureau in order to enable an improved

system for monitoring and enforcement to be established. The Central Authority would support the Permanent Bureau in encouraging judicial co-operation.

- 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 preparation of a list of Permanent Bureau functions would be useful. Please see above in answer to the points on financial and human resources.

- 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 UK has been working on different methods to deal with abduction to Shari'a law states. We are currently drawing up a model bilateral arrangement with Egypt in the form of a non-binding Memorandum of Understanding (MOU). We hope to pass the draft to the Egyptian authorities in Spring 2001. We plan to pilot the MOU with Egypt before extending the idea to other States. The MOU will function on the principle of good will and have the best interests of the child at its heart. It will focus on achievable goals – such as right of entry and exit to Egypt and the UK and the right to access for the left-behind parent. The UK understands that several countries already have bilateral arrangements with Shari'a states including Egypt.

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 courts in England and Wales take a liberal approach in leave to remove cases. Generally speaking if the primary carer applies for permission to relocate and the application is well founded the parent will succeed even if relocation will have a deleterious effect on contact to the left behind parent. This used to be the approach in Commonwealth countries but is no longer the case. The courts in England and Wales are now beginning to feel that the tide is turning against relocation. The majority of abduction cases dealt with by the court in London concern the primary carer returning to this jurisdiction. Judges here take the firm approach that the primary carer must return the child to its habitual residence and apply to the court in that country for permission to relocate. The primary carer returns to the child's habitual residence only to find permission is refused. This highly restrictive approach to relocation could therefore affect the operation of the Convention in that more judges will refuse to order the child to be returned to its habitual residence.