

QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF THE CONVENTION AND VIEWS ON POSSIBLE RECOMMENDATIONS

(1) The Role and Functioning of Central Authorities

General Questions

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

In general, most Central Authorities are co-operative. Delays in initiating proceedings in Scotland can occur when Central Authorities fail to enclose information about the law in their country (Article 7e). As regards outgoing cases we have experienced delay when an applicant has been asked to provide funds for return travel before proceedings are initiated. (Article 7f).

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

The Central Authority in Scotland has not experienced any difficulties in carrying out these duties.

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 a voluntary resolution? Do these measures lead to a delay?

Solicitors are asked by the Central Authority to consider first whether a voluntary return can be achieved. Experienced practitioners are normally able to assess whether the abducting parent has any realistic defence to an application for return. The practitioner should then, having given appropriate advice, explore whether there is any possibility of agreement being reached with the bereft parent. A common understanding of the Hague Convention amongst practitioners and a willingness to work together also helps facilitate a voluntary return.

Mediation is also a possibility and the parties might be referred to mediation either by a judge or by agreement between the agents. There are doubts about the effectiveness of mediation in some child abduction cases - particularly where the positions of the parents are polarised. Moreover, there is real concern that in certain circumstances mediation might expose the child to the risk of further abduction.

There is no evidence to indicate that seeking voluntary return or a voluntary solution leads to delay.

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?

On receipt of a valid request for return under the Convention, the Central Authority in Scotland issues a certificate which allows the applicant to receive automatic legal aid ; there is no further enquiry into the merits of the case or the means of the applicant. If the court judgement is appealed the applicant will get legal aid without enquiry into means provided the case has merit.

When the Central Authority has drawn up the legal aid certificate the request for return is passed to a firm of solicitors who will take action for the applicant. The solicitors are either recommended by the Law Society of Scotland or are already working for the applicant. If an Opinion from Legal Counsel is required this is usually covered by the legal aid certificate. This does not result in delays in our jurisdiction.

As regards cases originating in our country - we have experienced delays in some jurisdictions where it has been difficult to find a solicitor to act for the Scottish applicant.

5. Does your Central Authority represent applicant parents in Hague proceedings? If so, has this role given rise to any difficulties or conflicts?

The Scottish Central Authority does not represent applicant parents.

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 protection, 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?

If the Central Authority in Scotland is alerted to any particular concerns then it will inform the appropriate child protection bodies.

b) Provide information to either parent in respect of legal, financial, protection and other resources in your State?

If the Central Authority receives a request for such information it will do its best to answer the queries.

c) Facilitate contact with bodies providing such resources?

Again if such a request is received, the Central Authority will try to provide the necessary information.

d) Assist in providing any necessary care for the child pending custody proceedings?

The Central Authority can assist here but it is normally the role of a solicitor to do this.

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

See response to d).

- f) **Provide any assistance in ensuring that undertakings attached to a return order are respected?**

See response to d).

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

An application for organising or securing the effective exercise of rights of access is currently treated the same way as an application for return.

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

- a) **Provide information or advice?**

Yes

- b) **Facilitate the provision of legal aid or advice?**

Yes, automatic legal aid currently given on receipt of a valid application.

- c) **Initiate or assist in the institution of proceedings, where appropriate, on behalf of the applicant?**

Yes, although proceedings are initiated through a solicitor.

- d) **Assist in ensuring that the terms or conditions on which access has been ordered or agreed are respected?**

This decision is for the Court not the Central Authority.

- e) **Assist in cases where modification of existing access provisions is being sought?**

If modification of a Scottish court order is requested then applicant will be told to use domestic legal system?

If modification of foreign court order sought then Central Authority will provide assistance.

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?

This Central Authority maintains statistics and completes the form from the Hague Permanent Bureau.

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

The Central Authority for Scotland reaffirms its support for these conclusions.

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?

Central Authorities could be more involved in providing appropriate reassurance and guidance to a returning parent. The Central Authority in Scotland intends to shortly produce an information pack for parents returning to Scotland.

(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?

One court at first instance (Court of Session) with a single judge, same court on appeal in an appellate Division of three judges.

Potentially all 32 judges of the Court of Session have jurisdiction at first instance or on appeal but in reality specialisation does occur.

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?

Jurisdiction is limited to the Supreme Civil Court in Scotland.

3. What measures exist to ensure that Hague applications are dealt with promptly and expeditiously In particular:

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

Yes. Oral evidence is not normally required although in certain circumstances for example, where there is absolutely no agreement between parties about the facts of the case and the issue is one of consent the court may request oral evidence. In these circumstances the travel of the applicant and reasonable subsistence expenses will be covered by legal aid.

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

Hague procedures in the Scottish Courts are governed by fairly strict procedural rules. When an application is lodged in court, along with this shall also be lodged written evidence which shall be served on all interested parties.

At the first hearing of the application, the presiding judge shall determine what other written evidence (if any) is required and whether on special cause shown a particular matter should be the subject of oral evidence. Thereafter a date shall be fixed for the next hearing.

- 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 that control exercised?**

Once the application is filed in court, the matter is governed by the procedural rules of court. It should be dealt with expeditiously with a date being set in court seven days after the expiry of period of notice. If the case is not concluded within 6 weeks, parties can request a statement of reasons for the delay.

- 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?**

In our experience, very few appeals against a grant or refusal of a return application are raised, given the narrow interpretation our courts place on Article 13. An appeal may be lodged with an appeal Division of the Court of Session within 21 days of the date of decision but the grounds for appeal are limited to matters such as significant change in circumstances or the judge having mis-directed himself.

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 defender? 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 person opposing return must indicate his or her intention to raise defences at least 3 days before the date of the first hearing. He or she at this point is required to lodge with the court written evidence to support his or her position. The burden of proof is to prove the matter on the balance of probabilities. Once the applicant has established a prima facie case the burden of proof shifts to the respondent who thereby must prove a defence under article 13 or 20. It is characteristic of such situations that the burden of proof will be on the respondent. The raising of defences will inevitably prolong the case but the aim of the court is that the matter should still be dealt with within the six week period otherwise as stated above parties are entitled to seek a statement of reasons as to the delay.

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 their 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 a court order means the defender is in contempt of court. As such, the full range of civil remedies is available including civil imprisonment. It is possible that a

return order will not be effected if the child cannot be located. Apart from this we can think of no circumstances for not enforcing an order. There may, however, be good reason for not enforcing the order immediately. For example, travel arrangements have to be made. The child may also want to say farewells and sort his affairs.

Separate enforcement procedures are rarely invoked. When they are invoked they are normally successful.

7. Would you support any of the following recommendations?

- a) **Calling upon State Parties to consider the considerable advantages to be gained from a concentration of jurisdiction in a limited number of courts?**

Yes.

- b) **Underscoring the obligation of State Parties to process return applications expeditiously and making it clear that this obligation extends also to appeal procedures?**

Yes.

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

Yes.

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

Yes. In Scotland, the rules of the Court of Session provide a timetable for the Court. In Scotland the judges do, on the whole, exercise firm judicial management. Cases at first level and at the appellate level are given priority by the Keeper of the Rolls, the court official who is responsible for setting the timetable of the Court of Session.

- 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 defined?**

Yes.

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

No further methods proposed.

8. Please indicate any important developments since 1996 in your jurisdiction in the interpretation of Convention concepts?

Rights of Custody/Rights of Access

Changes to family law in Scotland made by the Children's (Scotland) Act 1995 emphasised that a parent's primary relationship to her child is one of responsibility. The terminology in the 1995 Act refers to parental responsibilities and rights. No person is entitled to remove a child habitually resident in Scotland or to retain a child outwith Scotland without the consent of a person with parental rights. Increasingly, the Scottish Central Authority finds it appropriate to extend the definition of "rights of custody" in the Hague Convention to include those persons with parental rights. This may mean that a parent with contact rights but also parental rights can make an application under the Hague 1980 Convention for the return of a child from abroad.

Habitual Residence

A recent case in Scotland suggests that a period of five weeks is an appreciable amount of time within the meaning of the test applied by the court to determine whether or not a person/child is habitually resident in any one place.

The Settlement of a Child in its New Environment

In a recent case where the relationship between the abducting mother and child was deemed to be fundamental in the child's life it was asked whether the mother was settled in the new environment. If the abducting mother had had advance warning that the authorities had located her the judge considered she would have tried to leave the country. Given this it was concluded that the child was not settled. When asking whether a child is settled at the present time, projection as to what is likely to happen into the future is an inherent element in the word "settled", and reference to the intentions of others, and in particular the abducting parent, very likely to be essential.

Consent or Acquiescence to the Removal or Retention of a Child

It has been held that a person's agreement to return children in the belief that he had no choice did not warrant an inference that he accepted that the children had been habitually resident in the requesting state or that they should be habitually resident there in the future.

Grave Risk

In a recent decision it was accepted that the test for this must be a high one if the central aims of the Convention are not to be defeated. The critical question here is whether it has been shown that the authorities in the requesting state could not deal appropriately with any of the points raised bearing upon risk of harm to which the child might be exposed or any situation in which he might be placed.

(3) Issues surrounding the Safe and Prompt Return of the Child

1. To what extent are your courts, when considering a return application, entitled and prepared to employ "undertakings" 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 return proceedings are possible undertakings first raised and how?

Scottish courts make less use of undertakings than some other jurisdictions. In the Court of Session a restrictive approach is taken to the application of 13b) of the Convention. There are few cases in which a grave risk of harm has been established. Either the harm is not considered to be grave, in which case return will be ordered or (exceptionally) potential harm is so grave that undertakings would not be effective.

Experience shows that undertakings are most often given in cases where a voluntary return is agreed. These voluntary undertakings have related to maintenance or housing.

It is submitted that the most crucial issue is to ensure that a custody hearing takes place as quickly as possible. Given this, greater attention should be given to preparing for the return of the child for example, alerting local judicial or administrative authorities than temporary measures such as undertakings or safe harbour orders.

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?

There is limited experience of trying to enforce agreements and undertakings in Scotland.

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 to overcome obstacles to the prompt return of a child?

There is very limited experience of seeking or requesting safe harbour orders or mirror orders.

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)?

Yes; a Consultation Paper about the ratification of this Convention was issued in December 2000. Responses are due by end March 2001.

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 cases been resolved?

Most of these cases involve situations where criminal charges have brought against abducting parent - see answer to 6) below. There has been one case whereby under a special scheme

operated by the country of habitual residence the abducting parent was allowed back into the country for the custody hearing.

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.

Criminal charges do present potential difficulties but experience has shown that they are sometimes dropped in order to facilitate the return of the child. It is submitted that if a child was to be returned and the abducting parent was prevented from re-entering the country of habitual residence it may be a breach of that parent's human rights. Scottish courts have, on occasion, ordered the return of children despite potential criminal charges against the abducting parent.

7. Please comment on any experience, as a requesting or as 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 Scottish Central Authority has no experience of this. It is submitted that direct judicial communication could be useful but such communication should be fully documented and made available to parties. Ideally, the communication should be made in the presence of the parties' representatives.

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 cases?

We have nominated a liaison judge.

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. The application will be assessed according to the merits of the case and the financial means of the accompanying parent.

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 application of the abducting parent?

Yes.

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?

Yes, the Scottish Executive has issued a Consultation Paper asking for views on ratification of the 1996 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 measure 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 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.

(4) Procedure for Securing Cross Frontier Access/Contact between Parent and Child

The process in Scotland for dealing with Hague Convention applications for access is currently under review. At the moment such an application is generally treated in the same way as an application for return i.e. on receipt of a valid application for access the Scottish Central Authority will issue a certificate giving the applicant automatic legal aid. The application will then be forwarded to a firm of solicitors who will take action for the applicant. This applies whether the application is a request for the establishment of access or for the enforcement of existing rights of access.

A judgement involving an Hague application for access has, however, caused the Scottish Central Authority to re-examine its procedures. This examination is continuing. It is likely that the Rules of Court will require to be changed. It is possible that access applications will be treated differently in the future. The Scottish Central Authority is also aware that a number of Conventions dealing with access are currently being drafted. For example, Brussels III, the proposed European Council Regulation on the Enforcement of Certain

Access Orders and the draft European Convention on Contact and it is likely that the Scottish Central Authority will want to consider the implications of these in addition to the ratification of Hague 1996.

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

A foreign applicant will be awarded automatic legal aid.

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

- a) **grant; and**
- b) **modify access/contact orders.**

The court dealing with a divorce action has jurisdiction to deal with an application for the making, variation or recall of any order relating to children which is ancillary or collateral to the divorce action even if the child in question is not habitually resident or present in Scotland. This is laid out in the Domicile and Matrimonial Proceedings Act 1973 as amended by the Children (Scotland) Act 1995. This power covers any child - not just children of the marriage (Children (Scotland) Act 1995 and the Family Law (Scotland) Act 1985).

3. What provisions exist for 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?

Recognition and enforcement of court orders is usually done through the European Convention on the Recognition and Enforcement of Decisions Relating to the Custody of Children. From 1 March Brussels II will also be in force and this will regulate jurisdiction and recognition of certain orders between nationals of EU member states (apart from Denmark).

We have little casework on enforcing court orders under the Hague Convention on the Civil Aspects of International Child Abduction 1980.

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

Such applications are processed expeditiously because all hearings involving children are given priority.

There are rules of court to ensure that applications under the European Convention on the Recognition and Enforcement of Decisions Relating to Custody of Children.

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

Solicitors acting for parties are encouraged to seek voluntary resolution. Mediation is also available.

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

We do not have enough experience of cases in Scotland to establish a presumption in international cases. In domestic cases the law presumes continuing contact with both parents.

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

Each case is decided on its own merits. It is possible that access will have to be supervised. In addition it is possible that residential access will not be allowed.

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

The Central Authority and/or the solicitor appointed to act for the applicant should be able to supply all the information necessary. This could take the form of booklets explaining court procedures, advice about mediation, social work services etc.

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?

As regards cases coming into Scotland delay can occur where the law of the requesting state is difficult to establish especially in respect of unmarried parents thus obscuring the exact nature of the parental rights and responsibilities relevant to the case.

The Scottish Central Authority does not have extensive experience of sending applications for access abroad under the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

b) The granting or maintaining of access rights to a parent residing abroad/in your jurisdiction?

See answer to a above.

c) The restriction or termination of access rights to a parent residing abroad/in your jurisdiction?

See answer to a) above.

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

Measures to encourage adherence to access conditions can be ordered or requested as a condition of contact. If the order is not complied with then the courts can impose the full range of civil remedies. If there is a fear that the child will not be returned after an access visit Scottish courts can order surrender of passports. Financial guarantees are not generally sought as general Family Law policy tends to avoid connecting custody/access with money.

There are European obligations with regard to the right to travel. The restriction of movement of the individuals concerned would need to be justified under EU law. A measure taken by the courts to withdraw a person's passport would need to be justifiable and proportionate in the interests of public policy and public security.

There seems to be an argument that the withdrawal of a passport by the courts to guarantee adherence to access conditions would meet the requirements above, assuming withdrawal would be considered on a case-by-case basis. We would need to seek legal advice on such a proposal, and will do so if the consultation exercise results in support for a measure to withdraw passports, and some detail of how this might be applied.

A measure to surrender a passport could apply to the parent or the child. In relation to the child, however, it was possible before October 1998, to include a child within the passport of a parent. There are therefore cases where it would not be possible to withdraw passport facilities for the child without surrendering a parent's passport. Also, the courts already have powers to withdraw passport facilities from children where a journey is known to be contrary to a court order, or to the wishes of a parent in whose favour a relevant order has been made (for example, a residence order, or where the parent has been awarded custody, care or control).

As a measure designed to help prevent child abduction, we understand that those children who could be potentially at risk would be likely to have a parent with a foreign nationality or dual nationality, or the child could be a dual national. The international law aspects of seizing a foreign passport would need to be considered. We are only in a position to comment on the seizure of British passports.

If a British passport issued in the UK is withdrawn, an application could be made for a replacement of the passport if the original is declared as lost. Therefore to make any proposals for withdrawal effective, an arrangement would need to be put in place for the courts to notify the Passport Agency. In these circumstances we can note our system to ensure a replacement is not issued without the court's permission. There would also need to be arrangements made for the Passport Agency to be notified when a surrendered passport is returned or the withdrawal is lifted.

11. How in practice are access orders enforced?

If the Order is not complied with then the full range of civil remedies is available including fines and imprisonment.

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

The importance of access is recognised. It is submitted that satisfactory access arrangements can help prevent abduction. Moreover in some cases if adequate access can be arranged it is

possible that a parent will opt for this rather than request a return of a child. It is, however important that the parents have absolute confidence that their child will be returned following an access visit.

(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 Scottish Central Authority has experienced no serious problems of such a nature in recent years.

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 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 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 Scottish Central Authority would not favour such a questionnaire but suggests that a code of practice which expands on Article 7 of the Convention might be useful.

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 Central Authority in Scotland supports the proposal to hold additional Special Commissions to review particular aspects of the Operation 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 Secretariat should explore mechanisms for improving the flow of information from Central Authorities to the Permanent Bureau in an endeavour to assist the process of monitoring and to enable information to be

disseminated where in the opinion of a Contracting State there has been a violation of the Convention.

Contracting States should assist the Permanent Bureau in implementing a programme of initial training so that States are helped to establish systems so that they can follow Convention practices.

(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.

We would support the role of the Permanent Bureau in its function of collecting information, monitoring case law and performance and assisting with the implementation of procedures in the Convention.

We would encourage contracting States to consider any request for funds seriously.

2. Are there any 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 finance and human resources either through approval of an increased budget or through voluntary contributions to accounts set aside for that purpose?

A list of potential Permanent Bureau functions would be useful. We would also welcome consideration of ways in which the Permanent Bureau could use its existing structure to supplement the various functions of the Permanent Bureau. It would be helpful if the Permanent Bureau produced a strategy document setting out the aims of the Permanent Bureau in the area of child law.

3. Would you favour a recommendation that State 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 that you would favour to promote further ratifications of and accessions to the Convention?

The Scottish Central Authority considers that a code of practice expanding on Article 7 of the Convention would be useful.

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 Foreign and Commonwealth Office are considering a bi-lateral with 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".

Our courts take a liberal approach to the question of relocation. One of the aims of the Convention is to encourage a parent with custody who is determined to move to another country to go to the courts and arrange proper access for the other parent. If the courts of that country take a restrictive approach to relocation then the parent may be more tempted to leave the country incognito.