

Questionnaire concerning the practical operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

(Including questions on 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)

The role and functions of Central Authorities

1. Have any difficulties arisen in practice in achieving effective communication with other Central Authorities? In particular, how are “modern rapid means of communication” used by your Central Authority in order to expedite communications, bearing in mind the requirements of confidentiality?

Difficulties are not generally encountered, other than the natural delays caused by major time zone differences. Email and fax are used regularly, due to the fairly urgent nature of the work. Also, telephone may be used in some cases.

2. Are there any other problems of cooperation with other Central Authorities to which you wish to draw attention?

In countries with a federal system of jurisdiction, if the abductor and child move from one jurisdiction to another, the proceedings must be re-commenced in the court in the new jurisdiction. Naturally, this can cause lengthy delays in cases.

Some countries also have difficulties with the understanding of the notion that a father not named on a child's birth certificate may, nonetheless, in Irish law, have guardianship rights and thus rights of custody within the meaning of Article 3 of the Hague Convention. The application of legal concepts (e.g. "recognition" of the child by a parent) of the state to which the child has been abducted which have no equivalent in Irish law has led in some instances to delay in acceptance by the Central Authority in some states of the fact that there has been a wrongful removal.

3. Does your Central Authority maintain a website and / or a brochure / information pack? (Please provide the web address or check if the information on the Hague Conference website is accurate, see < www.hcch.net > .. Child Abduction Section .. Links to related websites). If so, does the website and / or brochure / information pack contain the following information as recommended by the Special Commission of 2001:

Information in relation to the Irish Central Authority for Child Abduction is contained on the Department of Justice's website, www.justice.ie. Work on the development of specific webpages on that site for the central authority is currently nearing completion.

a) the other Contracting States in relation to whom the Convention is in effect;

Not yet

b) the means by which a missing child may be located;

Not yet

c) the designation and contact details for the Central Authority;

Yes

d) application procedures (for return and access), documentary requirements, any standard forms employed and any language requirements;

Not yet

e) details, where applicable, of how to apply for legal aid or otherwise for the provision of legal service;

Not yet

f) the judicial procedures, including appeals procedures, which apply to return applications;

Not yet

g) enforcement options and procedures for return and access orders;

Not yet

h) any special requirements which may arise in the course of the proceedings (e.g. with regard to matters of evidence);

Not yet

i) information concerning the services applicable for the protection of a returning child (and accompanying parent, where relevant), and concerning applications for legal aid for, or the provision of legal services to, the accompanying parent on return;

Not yet

j) information, if applicable, concerning liaison judges

Not yet

4. What measures does your Central Authority undertake to encourage voluntary returns and amicable resolutions, and how do you seek to ensure that these negotiations do not lead to undue delay in return proceedings? [Note: Questions 20-22 deal with the subject of mediation.]

On discovery of the whereabouts of child by the Garda Síochána (National Police) or the Health Service Executive (the national body with responsibility for, among other things, children at risk and with local networks of child welfare officers for that purpose).attempts are made by those Authorities in suitable cases to secure a voluntary return or an amicable resolution of the issues. And where the Legal Aid Board (see question 8 below) becomes involved in making an application to the High Court to seek an order for the return of a child, it is conscious of the requirement to seek a voluntary return of an amicable resolution. Family Law in Ireland expressly encourages, and the courts support, voluntary agreements or mediation between the parties to resolve their differences. Experience in child abduction cases is that these approaches do not delay matters because the overall requirement under the Convention is to secure the expeditious return of the child.

5. In accordance with the Guide to Good Practice – Part I on Central Authority Practice, has your Central Authority shared its expertise with another Central Authority or

benefited from another Central Authority sharing its expertise with your Central Authority?

No

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

The Child Abduction and Enforcement of Custody Orders Act 1991, which gives the force of Law in Ireland in Ireland to the 1980 Convention, confines jurisdiction in Hague Convention matters to the High Court. This is the only level of jurisdiction at first instance for Hague cases. The statutory maximum number of judges in the High Court is 26. In practice, only a limited number of High Court judges deal with Hague cases on a regular basis. Appeals from the decisions of the High Court in Hague Convention cases lie to the Supreme Court. There are a total of eight judges in the Supreme Court.

7. What measures exist to ensure that Hague applications are dealt with promptly (Article 7) and expeditiously (Article 11)? In particular:

a) Are there set timetables at both trial and appellate level to ensure the speedy determination of return applications?

EU Regulation 2201/2003 (also known as Brussels II *bis* regulation) sets out strict time limits under Article 11 for these cases. It states that "the court shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged". That Regulation has the force of domestic law.

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

Oral evidence is rarely permitted although it may occasionally be heard where there is an unresolvable clash in affidavit evidence on a crucial point. Oral evidence is discouraged largely because it unduly prolongs a procedure in which time is of the essence. As far as affidavit evidence is concerned, this is governed by Order 40 Rule 4 of the Rules of the Superior Courts:

"Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, and shall state his means of knowledge thereof, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted."

Since the initial application in a Hague Convention case is made *ex parte* (without notice to the other side) and is by way of an interlocutory motion, statements of belief as above are permitted. Where Article 13 defences are claimed, they must be set out fully in the Respondent's replying affidavit. Other affidavit evidence in support may also be filed.

Rules of evidence which apply to Hague Convention cases heard before the High Court in Ireland are the same, broadly, as those applying in any other type of proceedings, except for the specific rules (e.g. in regard to "foreign law" evidence) which are contained in the Convention itself. However, it is generally accepted that in these cases, as in other family law cases, the court has a discretion to apply the rules of evidence rather less strictly than would be the case in, say, a criminal prosecution. This applies, for instance, to the rule against hearsay; but the Court would nevertheless always bear in mind that hearsay is inherently a questionable form of evidence.

Specific statutory provision is made in the Children Act 1997 for the hearing of indirect evidence of children, and for the taking in evidence of reports, in civil proceedings concerning the welfare of a child, as exceptions to the rule against hearsay; built in to these provisions are safeguards to ensure that the Court will attach appropriate weight to such hearsay evidence.

On a general point, section 38(2) of the Child Abduction and Enforcement of Custody Orders Act 1991 (which gives force of law in Ireland to the Hague and Luxembourg Conventions) provides that Rules of Court may be made for the expeditious hearing of an application made under the Hague or Luxembourg Convention.

8. What measures exist to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers? Do such measures lead to delays?

The Civil Legal Aid Act 1995 established the Legal Aid Board on a statutory footing, it having been in existence since 1980 on an administrative basis. Its function is to deliver State-funded legal aid and advice to certain classes of persons in a range of civil proceedings through a network of Law Centres in the principal centres of population. Under section 28(5) of that Act, legal aid is granted to applicants under the Convention where the Central Authority is under an obligation to provide legal assistance. In effect, this means that in the case of incoming applications under the Hague Convention legal assistance is provided automatically to applicants regardless of means. On receipt of an incoming application under the Hague Convention the Central Authority contacts the Legal Aid Board with a request for the assignment of a solicitor to represent the applicant. Cases are dealt with on a priority basis. The Board arranges for the assignment of a barrister or senior counsel for the High Court proceedings. The High Court and the Supreme Court have expressed concern about the considerable delay in the processing of some applications. The policy of the Central Authority and other authorities (including the Legal Aid Board) is to review cases where delay has occurred. Notwithstanding the use of fast-track management systems, the experience is that delay is unavoidable in some cases. In outgoing cases where the requested country does not provide free legal aid there is potential for delay. However, the majority of outgoing cases are legally aided.

9. In what circumstances and by what procedures / methods are children heard in Hague proceedings? In particular how will a determination be made as to whether a child objects to return, and in what circumstances might judges refuse to return a child based on his or her objections?

In these matters the deliberations of the Court are subject to the principle that the welfare of the child is paramount. The Court has the discretion to consider any objections which may be raised in relation to the return of the child. The evidence of the child may be heard and the Court may consider reports on the child's position, for example, welfare reports (see answer to question 3(b)) above.)

This matter was considered by the Irish Supreme Court in the case of *RMM v MD*, Denham J No. 162/99M of 9 December, 1999. The judgment quoted with approval certain passages from the explanatory report on the Convention on the Civil Aspects of International Child Abduction by Elisa Perez-Vera including paragraph 30 which states:-

"In addition, the Convention also provides that the child's views concerning the essential question of its return or retention may be conclusive, provided it has, according to the

competent authorities, attained an age and degree of maturity sufficient for its views to be taken into account. In this way, the Convention gives children the possibility of interpreting their own interests. Of course, this provision could prove dangerous if it were applied by means of the direct questioning of young people who may admittedly have a clear grasp of the situation but who may also suffer serious psychological harm if they think they are being forced to choose between two parents. However, such a provision is absolutely necessary given the fact that the Convention applies, *ratione personae*, to all children under the age of sixteen the fact must be acknowledged that it would be very difficult to accept that a child of, for example, fifteen years of age, should be returned against its will. Moreover, as regards this particular point, all efforts to agree on a minimum age at which the views of the child could be taken into account failed, since all the ages suggested seemed artificial, even arbitrary. It seemed best to leave the application of this clause to the discretion of the competent authorities".

The Supreme Court went on to state that this aspect of Article 13 is a separate ground and that the child's views alone are sufficient basis to refuse a return. The court expressed agreement with the approach in the English case of *S. v. S. (Child's views)* [1992] 2 F.L.R. 492 where it was determined that the part of Article 13 which related to the child's objection to being returned is completely separate from paragraph (b) which referred to the grave risk of physical or psychological harm and that there is no reason to interpret that part of the article as importing a requirement to satisfy paragraph (b) or to interpret the word 'object' to mean something stronger than its literal meaning. The court emphasised, however, that this is an area where the discretion of the judge must be exercised with great care. The Supreme Court also cited with agreement the approach of Balcombe LJ, in *S. v S. (Child Abduction) (Child's Views)* where that judgement stated:

"(2) The establishment of the facts necessary to 'open the door' under Article 13

(a) The question whether:

(i) a child objects to being returned; and

(ii) has attained an age and degree of maturity at which it is appropriate to take account of its views;

are questions of fact which are peculiarly within the province of the trial judge. Miss Scotland submitted that the child's views should not be sought, either by the court welfare officer or the judge, until the evidence of the parents has been completed. We know of no justification for this submission. She also asked us to lay down guidelines for the procedure to be adopted in ascertaining the child's views and degree of maturity. We do not think it is desirable that we should do so. These cases under the Hague Convention come before the very experienced judges of the Family Division, and they can be relied on, in those cases where it may be necessary to ascertain these facts, to devise an appropriate procedure, always bearing in mind that the Convention is primarily designed to secure a speedy return of the child to the country from which it has been abducted.

(b) It will usually be necessary for the judge to find out why the child objects to being returned. If the only reason is because it wants to remain with the abduction parent, who is

also asserting that he or she is unwilling to return, then this will be a highly relevant factor when the judge comes to consider the exercise of discretion.

(c) Article 13 does not seek to lay down any age below which a child is to be considered as not having attained sufficient maturity for its views to be taken into account. Nor should we. In this connection it is material to note that Art 12 of the UN Convention on the Rights of the Child provides as follows.

1. State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

(d) In our judgment, no criticism can be made of the decision by Ewbank J, to ascertain C's views, nor of the procedure which he adopted for that purpose. There was evidence which entitled him to find that C objected to being returned to France and that she had attained an age and degree of maturity at which it was appropriate to take account of her views. Those are findings with which this court should not interfere."

The Supreme Court, in this case, went on to state that the Hague Convention is quite clear on its face that a child who objects to being returned and who has attained an age and a degree of maturity is entitled to have his or her view taken into account and that the trial judge was entitled to rely on the child's view in such a way as to make it quite clear that the child's view accorded with other determinations which the trial judge had made in the case so as to protect the child's long term psychology. The Supreme Court decision made it clear that it must always be the case that a decision not to return a child to its habitual residence is a decision of the court and that care should be taken that it is not, nor does it appear to be, the decision of the child.

There are no specific statutory rules governing decisions of this type; it is in the discretion of the Court to decide such case based on the individual circumstances. (See operation of the law as indicated in reply above.)

10. How has Article 20 of the Convention been applied in your State? Are you aware of an increase in the use of this Article, bearing in mind that the Statistical Survey of all cases in 1999 found no case in which this exception to return was successfully invoked?

This Article has recently been successfully used in a defence. This was a case where the child had been taken from foster care by the mother, who had been visiting the child on an access visit. The Irish court found that it was a possibility that, should the child be returned to Northern Ireland, the child might be put up for adoption. Before an adoption can take place in this jurisdiction, very stringent criteria must be met. The court found that the possibility of the

adoption of the child did not reflect or protect the constitutional rights of the family, and accordingly the judge exercised his discretion under Article 20 of the Convention.

Legal issues and interpretation of key concepts

11. Please comment on any Constitutional procedures or principles which make it difficult to implement the Hague Convention fully.

See Question 10 above.

12. Are there any important developments in legislation, case law or procedural law relevant to the operation of the 1980 Convention to which you wish to draw attention? Please could you provide us with an electronic copy of relevant legislation if possible?

Council Regulation 2201/ 2003, which is directly effective in all EU Member States.

13. Please indicate any important developments since the Special Commission of 2001 in your jurisdiction in the interpretation of Convention concepts, in particular the following:

a) rights of custody (Articles 3 a) and 5 a));

There is an important and useful judgement, *RC -v- IS* (High Court (Finlay-Geoghegan J) unreported, 2003 92M), which sets out the relationship between the concepts of rights of guardianship, custody and access under Irish law, on the one hand, and the "rights of custody" and "rights of access" in the Hague Convention, on the other.

b) habitual residence (Articles 3 a) and 4);

The expression "habitual residence" is interpreted by the Irish Courts as to be equated with ordinary residence.

c) rights of access (Article 5 b));

See above in relation to rights of custody.

d) the actual exercise of rights of custody (Articles 3 b) and 13(1) a));

e) the settlement of the child in his / her new environment (Article 12(2));

f) the one-year period for the purposes of Article 12;

g) consent or acquiescence to the removal or retention of the child (Article 13(1) a));

h) grave risk (Article 13(1) b));

i) exposure to physical or psychological harm (Article 13(1) b));

The Irish Courts have interpreted this as covering only serious psychological harm. The Courts may consider undertakings by the parties concerned as a means to removing the risk of damage to the child.

j) intolerable situation (Article 13(1) b));

k) the child objects to being returned (Article 13(2)); (see also question 9)

l) fundamental principles relating to the protection of human rights and fundamental freedoms (Article 20). (See also question 10)

See answer to question 10.

Direct international judicial communication

14. Please describe any developments in the area of direct international judicial communication. If your country has responded to the 2002 Questionnaire on direct international judicial communication please describe any developments in this area since your response was made. (The Questionnaire is available on the website of the Hague Conference at: < www.hcch.net > .. Child Abduction Section .. Questionnaire & Responses).

This office has not completed the 2002 Questionnaire on direct international judicial communication.

Immigration / asylum / refugee matters

15. Have you any experience of cases in which immigration / visa 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?

This office was involved with one case, where a married couple resident in Ireland travelled to Bosnia on holiday. Once there, the father took the mother's passport and those of their three children, to prevent them leaving the country. The mother was able, through the help of the Bosnian police, to get her passport returned. She returned to Ireland and applied under the Hague Convention for the return of her children. The Bosnian courts ordered the return of the children, but the issue of passports needed to be resolved. It was believed that the father had destroyed the children's passports, so this office liaised with the District Court in Dublin for an order to be made dispensing with the need for the father's consent for new passports for the children, who were Irish citizens, and allowing the mother to obtain passports at her request alone.

16. Have you any experience of cases involving links between asylum or refugee applications and the 1980 Convention? In particular, please comment on any cases in which the respondent in proceedings for the return of a child has applied for asylum or refugee status (including for the child) in the country in which the application for return is to be considered. How have such cases been resolved?

Yes, this office has dealt with three cases where the issue of asylum or refugee applications was involved.

In the first, a couple from Zaire sought asylum in Ireland. They asserted that they had been married in Zaire, but did not have any documentary evidence to prove this. A child was born to the couple, and when the child was one year old, the mother abducted the child, and removed him to Germany, where she once again sought asylum, under a different name. She alleged that she had never been married to the applicant, and that therefore, as an unmarried father, the applicant had no rights of custody over the child under Irish law. The German authorities requested an Article 15 declaration, which the Irish court refused to provide. Thus, the German Central Authority declined to accept the application.

Our second case involved a married couple who had sought leave to remain in the state on the basis of being parents of an Irish born child. The father removed the child to Romania, where the

Romanian courts ordered the return of the child. The difficulty was that the father would not return with the child, and the mother did not have a re-entry visa to enable her to leave the country to collect the child and return. This office was able to liaise with the Visa and Immigration sections of the Department of Justice, Equality and Law Reform in order to resolve the issue, and the mother travelled to Romania to collect the child and returned her to Ireland. Our third case involved two Angolan nationals who sought asylum in Switzerland in 1990. The mother had to leave the family home in Switzerland in 2002 temporarily, because of domestic violence. However, in 2003, the father took the two children and sought asylum in Ireland. The children were living in a reception centre for asylum seekers in Ireland, along with the father's new partner and child (but not with the father, who had left them), when the mother made the application for the children's return to Switzerland in 2005. This office initially tried to arrange a voluntary return of the children, and had various contacts with the Health Service Executive and with the Reception and Integration Agency within the Department of Justice, Equality and Law Reform. The plan was to establish telephone contact between the mother and the children, and the girls would then be returned to their mother with the help of the International Organisation for Migration. However, the mother disappeared from her residence in Switzerland and has not been contactable since. The application accordingly had to be treated as withdrawn.

17. Have you any experience of cases in which immigration / visa questions have affected a finding of habitual residence in the State from which the child was removed or retained?

No

18. Have you any experience of cases in which immigration / visa questions have inhibited the exercise of rights of access?

No

Criminal proceedings

19. 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.

Cases where criminal charges are pending against the abducting parent in the country to which the child is to be returned arise in only a limited number of applications in Ireland. Where the abductor is arrested and detained on foot of an extradition warrant for the particular offence, the child must be put in care (if the applicant parent is abroad). If the criminal charges are of a kind as to raise issues under 13(b) of the Hague Convention then the High Court could take such matters into account in deciding on custody of the child while the child is in the State.

See also reply to question 27 on undertakings.

Mediation

20. Are there any programmes of mediation available in your State for parents or other persons involved in Hague Convention cases? Please describe these, indicating inter alia the methods employed to ensure that mediated agreements are enforceable and respected by the parties, as well as the availability of, and training opportunities for, international mediators.

The Children Act 1997 makes provision for mediation as an alternative to court proceedings concerning the custody of and access to children. It encourages couples who are in dispute to

agree to the custody of and access to their children, without the needs for court intervention. Before instituting court proceedings for guardianship, custody or access, a solicitor is obliged, under this act, to discuss with the parent the possibility of engaging in counselling and mediation to assist in effecting an agreement between the parties. An agreement in writing between parties can be made a rule of court and thus become enforceable in the same way as if it were a court order.

The Family Support Agency brings together programmes designed to support ongoing parenting relationships for children. Its functions include the provision of a family mediation service, both directly or through support for others providing these services and the administering of grants for such purposes.

21. How do you ensure that mediation procedures do not unduly delay proceedings for the return of the child?

This would be a matter for the solicitor involved.

22. Do you have any other comments relating to mediation in the context of the 1980 Convention either at a preventive stage or when a removal or retention has occurred?

No comment

Training and education

23. Do you have any comments relating to how judicial (or other) seminars or conferences at the national, regional and international levels have supported the effective functioning of the Convention? In particular, how have the conclusions and recommendations of these seminars or conferences, (some of which are available on the website of the Hague Conference at: < www.hcch.net > .. Child Abduction Section), had an impact on the functioning of the 1980 Convention?

No

24. Can you give details of any training sessions / conferences organised in your country, and the influence that such sessions have had?

No such training sessions or conferences have been organised in this country.

Ensuring the safe return of children where issues such as domestic violence and abuse are raised

25. Is the issue of domestic violence or abuse often raised as an exception to return in child abduction cases? What is the general approach of your courts to such cases and, in particular, how far do they investigate the merits of a claim that such violence or abuse has occurred?

This defence has been used increasingly. Irish courts usually look for some evidence that abuse has actually taken place, such as police or hospital reports. The court may also make use of undertakings in an attempt to safeguard the abducting parent, but domestic violence by one parent against another has not been interpreted as necessarily presenting a "grave risk" to the child upon their return.

26. What procedures and measures are in place in your State to secure the safe return of the child (and the accompanying parent, where relevant) where issues of (alleged) domestic violence or abuse are raised?

Irish courts have used undertakings in order to safeguard the interests of the child and accompanying parent on return. Information can be given to returning parents in relation to shelters and domestic legislation to protect the child and/ or the parent

27. To what extent are your courts entitled and prepared to employ “undertakings” (i.e. promises offered by, or required of the applicant) as a means of overcoming obstacles to the safe return of the child? Please describe the subject matter of undertakings required / requested.

Irish Courts have wide discretion to employ undertakings when considering the return of a child. The question of undertakings may be raised by either party or the High Court itself. And when the evidence in the affidavits and any social reports in being taken into account by the Judge it would be a matter for consideration as to whether in all the circumstances there were reasonable grounds for holding that the situation could be met by undertakings and that undertakings were applicable (TMM and MD, Supreme Court [1999]). The Irish Supreme Court has held (*P. v B.* [1995] ILRM 201) that undertakings may be given by a party to a proceeding under the Child Abduction and Enforcement of Custody Orders Act, 1991 (which gives effect in Irish law to the Hague and Luxembourg Conventions) and accepted by the court.

The Supreme Court held that such undertakings were entirely consistent with the 1991 Act and the Hague Convention. The Supreme Court saw such undertakings as, in particular, being for the welfare of the child during the transition from one jurisdiction to another but also protecting a parent in his or her role under the Irish Constitution. The Supreme Court also held that undertakings when sought and given must be clear and certain, and that it is essential that the matters be clearly and specifically determined by the court for the parties.

An example of undertakings given arose in a case before the High Court in 1997 where the plaintiff (the father) sought return to Italy of the child who had been brought to Ireland by her mother. An Order was made for the return of the child to Italy in light of certain undertakings given by the father and the mother.

On behalf of the father these were:

The mother and the child were to be provided with accommodation at an apartment at a given address until the matter of the family and the accommodation of the parties was decided by the Italian Court.

The father was not to attend at or enter or otherwise watch or beset the apartment in which Mrs P was residing and he was not to approach the mother or interfere with her in any way. The father was to pay the mother for herself and her child in a sum equivalent to £400 per month, the first payment to be made in advance to the mother's Solicitor on a specified date. The father was to pay the airfares from Ireland to Italy to enable the mother and the child to return to Italy on a specified date.

The father was to permit his wife to collect her personal effects and those of the child from the family home by appointment on a specified date.

On behalf of the mother these were:

The mother was to hand in the child's passport to the Italian Court for the period of transition until the Italian Court took up the case.

The father was to have access to the child on three evening each week and also at the weekends at times which were specified in the undertaking. The access was to take place in the presence of, and under the supervision of either or both of the mother's parents at their home.

Both parties also undertook to cooperate in ensuring the prompt disposal of the proceedings in the Italian Courts.

In addition, at the request of the Judge as to the admissibility of the purported Affidavit evidence, the husband undertook to arrange for the notarisation of the un-notarised Affidavits which had been filed in the proceedings.

However, it appears that on return the father failed to honour the undertakings and a motion was served by the mother in the Irish High Court seeking enforcement of the husband's undertakings.

The High Court found that it could make no order in this case. The judgment considered the difficulties arising in recognition of a common law concept of undertakings in non-common law jurisdictions, and quoted with approval authorities which proposed that Central Authorities may have a role in explaining approaches by their courts to particular cases under the Convention.

In a recent case, the abducting mother told the court she was prepared to return to Australia, on condition that the father paid for her and the children's travel, and that the father undertook not to cooperate with criminal proceedings that may be pending against the mother for the abduction. Such undertakings were incorporated into the return order.

The father then appeared to revoke his undertaking to pay for the mother's airfare, and refused to give an undertaking in relation to the criminal proceedings. It was a possibility that the court would now not return the children, given that the father appeared to be breaching the order. However, the father eventually complied, and the return was agreed upon.

28. 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 between the parties and those made at the request of the court?
Such undertakings, whether by agreement or at the request of the court, while not binding on the Irish Court would be fully respected.

29. To what extent are your courts entitled or 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)?

If the circumstances are appropriate the Court will grant, on request, mirror orders.

30. Do you have any comments on the use of undertakings, mirror orders or safe harbour orders?

No comment

31. Do you have any other comments relating to domestic violence or abuse in the context of the 1980 Convention?

No comment

32. Are you aware of cases in which your authorities have refused to make or enforce an order in respect of a young child on the basis that an abducting parent who is the child's primary carer, refuses or is otherwise not in a position to return with the child?

Yes, in one particular instance. The father was the abducting parent, and would not return to the UK with his two young children. The Irish courts did not order the return of the child as the applicant mother was not in a position to care for them. If the children had been ordered to return to the UK it was likely that they would have to end up in State care. An order was however made for the mother to have liberal access to the children.

Standard questionnaire for newly acceding States

33. If your State has acceded to the Convention have you filled out the standard questionnaire for newly acceding States? If so, have you any comments about the ease or otherwise of filling out this questionnaire? If not, can you explain why?

N/A

34. Has your State found the responses to the standard questionnaire for newly acceding States (available on the website of the Hague Conference at: < www.hcch.net > .. Child Abduction Section .. Standard questionnaire for newly acceding States) useful when considering whether or not to accept the accession of an acceding State? What additional information would be useful?

No comment

35. 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, and how do you ensure that this process does not result in undue delays?

Our Department of Foreign Affairs decides, in consultation with the Central Authority, whether to accept a newly acceding State.

The Guide to Good Practice

36. In what ways have you used the Guide to Good Practice – Part I on Central Authority Practice, Part II on Implementing Measures and Part III on Preventive Measures to assist in implementing for the first time, or improving the implementation or operation of, the Convention in your State?

The practices of this Central Authority are in compliance with those recommended in the Guide to Good Practice.

37. How has the Guide to Good Practice assisted your State in making policy or practical decisions relating to the implementation or operation of the Convention?

No comment

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

No comment

39. Do you have any comments concerning the Guide to Good Practice – Part III on Preventive Measures including how best to publicise this Part of the Guide?

No comment

40. Please describe any developments in legislation, case law or practice relating to enforcement measures and transfrontier access / contact. If your country has responded to the Questionnaire on Enforcement Measures distributed in July 2004 or the Consultation Paper on Transfrontier Access / Contact distributed in January 2002 please describe any developments in legislation, case law or practice since your response was made. (The Questionnaire and Consultation Paper are available on the website of the Hague Conference at: < www.hcch.net > .. Child Abduction Section .. Questionnaire & Responses).

This office has not responded to this questionnaire.

41. Are there any particular matters which you would like to see included in a Guide to Good Practice on Transfrontier Access / Contact? (See “Transfrontier Access / Contact and the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction – Final Report” drawn up by William Duncan, Deputy Secretary General, Preliminary Document No 5 of July 2002 available at: < www.hcch.net > .. Conventions .. Convention 28 .. Practical Operation Documents.)

No comment

42. Are there any other topics that you would like to see form the basis of future parts of the Guide to Good Practice in addition to those which are already published or are under consideration (these are: Part I on Central Authority Practice; Part II on Implementing Measures; Part III on Preventive Measures as well as enforcement measures and access / contact)?

No comment

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

No comment

44. Can you list any examples of good practice not included in the Guides?

No comment

Standardised consent form

45. The Permanent Bureau is consulting with States and relevant authorities with regard to developing a standardised or harmonised form for obtaining consent from holders of parental responsibility when a child leaves a State (see the Guide to Good Practice – Part III on Preventive Measures). Do you have any comments about the development of such a form? Or any suggestions as to what information such a form should / should not include?

This office agrees in principle with this idea. It should state whether the child is allowed to leave a State for a set period of time, or indefinitely, so as to clarify allegations of acquiescence.

46. Does your Central Authority maintain accurate statistics concerning the cases it deals with under the Convention, and does it submit annual returns of statistics to the Permanent Bureau in accordance with the forms established by the Permanent Bureau in consultation with Central Authorities? If not, please explain why.

Yes, we do. An annual press release with statistics is also released each year.

47. Does your Central Authority use any special software for case management / statistical purposes? Would your Central Authority be interested in using the new iChild software which is currently being piloted in seven Central Authorities in six Contracting States?

No special software is in use.

48. Has the Convention given rise to (a) any publicity (positive or negative) in your country, or (b) any debate or discussion in your national Parliament or its equivalent?

Publicity in one recent case was both positive and negative. It involved Irish grandparents who falsified a child's passport in order to remove him from the US and the care of his mother. There were discussions in the US Senate in relation to the matter. This office liaised with the US Department of State and the Citizens Service of the American Embassy in Dublin in the matter. It is the policy of this office not to comment on individual cases. American media coverage was picked up by Irish media

49. Is the Convention having any negative effects which are causing concern?

None that we are aware of.

50. By what methods do you disseminate information about the Convention?

The Hague website has proven to be extremely useful in relation to acquiring information in relation to the Convention.

51. Could you provide a list (including contact details and web site addresses) of non-governmental organisations in your State which are involved in matters covered by the 1980 and / or 1996 Conventions?

The Irish Centre for Parentally Abducted Children (ICPAC)
St. Annes Parish Centre
Molesworth Place
Dublin 2

Telephone: +353 1 6620667

Fax: +353 1 6625132

The Garda Síochána (National Police) also have a website, www.missingkids.ie, which provides resources for parents whose children have disappeared, and links to other relevant websites.

52. Please comment or state your reflections on services provided by the Permanent Bureau to assist the implementation and operation of the Convention, such as:

a) INCADAT;

This is useful, and has been used in order to forward case law to other Central Authorities.

b) the Judges' Newsletter on International Child Protection;

c) the bibliography of the Convention;

d) the Child Abduction Section on the website of the Hague Conference;

This is useful, particularly for updated information in relation to the location of foreign Central Authorities.

e) INCASTAT (the database for the electronic collection and analysis of statistics on the Convention, which is currently being developed);

This office is not familiar with this database.

f) iChild (the electronic case management system designed by the Canadian software company WorldReach, which is currently being piloted by seven Central Authorities in six Contracting States).

This office is not familiar with this software.

g) support for national / international judicial (and other) seminars / conferences concerning the Convention;

h) support for communications among Central Authorities, including maintenance of updated contact details. Have you any comments or suggestions concerning the activities in which the Permanent Bureau engages to assist in the effective functioning of the Convention?

Compliance with the Convention

54. Are there any Contracting States with whom you are having particular difficulties in achieving successful cooperation? Please specify these difficulties.

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

No

56. Are you aware of any troubling cases of international abduction which fall outside the scope of the Convention?

No, but this office would not generally be aware of such cases, as the best place for assistance in such a matter is the Department of Foreign Affairs, which is able to provide some consular assistance.

57. Are there any States that you would particularly like to see become a State Party to the Convention? Are there any States (which are not Parties to the Convention or Members of the Hague Conference) that you would like to see invited to the Special Commission

meeting in October / November 2006. Would you be willing to contribute to a fund to enable certain developing States to attend?

No comment.

58. Do you have any comments on bilateral or other agreements between your State and a non-Contracting State?

No comment.

59. What additional information would you find useful on the non-Hague Convention page on INCADAT available at < www.incadat.com >.

No comment.

Relationship with other instruments

60. Do you have any comments or observations on the impact of regional instruments on the operation of the 1980 Hague Convention, for example, Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 and the 1989 Inter-American Convention on the International Return of Children?

Council Regulation (EC) No. 2201/2003 has proved beneficial, particularly in relation to situations where a court refuses to return a child.

61. Do you have any comments or observations on the impact of international instruments on the operation of the 1980 Hague Convention, in particular, the 1989 United Nations Convention on the Rights of the Child?

The Hague Convention of 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children

No comment.

62. If the 1996 Hague Convention is in force in your State, do you have any comments regarding (a) how it has been implemented; (b) how it is operating?

N/A

63. If the 1996 Hague Convention is not in force in your State, is your State considering implementing this Convention? What are viewed as (a) the main advantages and (b) the main difficulties in implementing this Convention?

Ireland enacted legislation on 16 December 2000 (the Protection of Children (Hague Convention) Act 2000) which would give the force of law to the 1996 Convention and enables the State to ratify the Convention. Clearance at EU level is being sought by the State to proceed with signature and ratification of the Convention.

64. Have you experienced any difficulties concerning interpretation of particular provisions?

As this has not yet been enacted in this jurisdiction, this question does not apply

65. Would you find a Guide to Good Practice on implementation of this Convention useful?
Yes

66. The Special Commission of 2001 recognised the potential advantages of the 1996 Hague Convention as an adjunct to the 1980 Hague Convention, and recommended that Contracting States should consider ratification or accession. How has your State responded to this recommendation?

See Question 63 above

Any other matters and recommendations

67. States are invited to comment on any other matters which they may wish to raise concerning the practical operation of the 1980 Convention or the implementation of the 1996 Convention.

No comment.

68. States are invited to make proposals concerning recommendations to be made by the Special Commission

No comment