

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,”¹ used by your Central Authority in order to expedite communications, bearing in mind the requirements of confidentiality?**

In general most Central Authorities are extremely co-operative. Delays occur with incoming cases in Scotland when requesting Central Authorities fail to provide all the necessary documents. In particular, an affidavit is required in Scotland before court proceedings can be raised.

The Central Authority for Scotland makes full use of modern, rapid means of communication. Case papers are often scanned at the outset and sent by e-mail with the originals, which are then forwarded by airmail. The Central Authority for Scotland has encountered no problems thus far with modern communication methods and the requirement for confidentiality.

- 2. Are there any other problems of co-operation with other Central Authorities to which you wish to draw attention?**

The Central Authority for Scotland often has difficulties in achieving effective communication with certain Central Authorities. Regularly, requests for updates on cases can go unanswered and often this can simply be interpreted that there is nothing further to report. However, it would be helpful to have this clarified for the sake of the applicant.

- 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:**

Yes, information can be found on the www.hcch.net web pages.

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

Yes.

¹ See the Guide to Good Practice – Part I on Central Authority Practice, Chapter 1.3.3.

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

In progress (due for completion by end of August 2006).

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;

Yes.

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

No, this is not required as cases are granted automatic legal aid in respect of this Convention.

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

In progress (due for completion by end of August 2006).

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

In progress (due for completion by end of August 2006).

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

In progress (due for completion by end of August 2006).

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;

In progress (due for completion by end of August 2006).

j) information, if applicable, concerning liaison judges”?

In progress (due for completion by end of August 2006).

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.]

Solicitors are encouraged by the Central Authority to seek a voluntary return in the first

instance, if appropriate. The initial instructions given to the solicitor emphasise the need for the case to be dealt with within the six week deadline. All practitioners dealing with Hague cases have an understanding of the need to work together with foreign authorities and parents to bring about a voluntary settlement if possible.

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?²

The Central Authority for Scotland is always willing to share information about practice and procedure in the spirit of co-operation and does so regularly in the context of specific cases.

Court Proceedings³

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?

Jurisdiction is limited to the Supreme Civil Court in Scotland.

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?

Yes. In Scotland, the rules of the Court of Session provide a timetable for the Court. In Scotland the judges do, in general, exercise firm judicial management. Cases at the 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.

A system operates whereby cases are given priority as soon as presented (see: Rules of the Court of Session 70.5 – 70.8). Petition procedure is used so as to allow for maximum flexibility. The period of notice is very short at only four days and a first hearing takes place within seven days thereafter. The judge is then able to exercise firm case management to secure expeditious progress of the case; the Rules of the Court contain provisions exclusively directed to Hague Convention cases the tenor of which is that progress in these cases must be rapid and that assists the judge in requiring parties to keep to tight time scales.

The court gives priority to these cases throughout their passage through its hands and early dates for second hearings and, if necessary, reclaiming motions (appeals) are provided. The Hague Liaison judge checks that the court is achieving satisfactory timescales by keeping a file detailing the progress of all cases, which is delivered to her periodically.

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

² See, in particular, Chapter 6.5 on twinning arrangements.

³ See Guide to Good Practice – Part II on Implementing Measures, chapters 5 – 7.

Hague procedures in the Scottish Courts are governed by strict procedural rules. When an application is lodged in court, along with this written evidence is also lodged which is to be served on all interested parties. At the first hearing 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 is fixed for the next hearing.

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?

In Scotland, once an application has been checked by the Central Authority, an applicant is put in contact with a solicitor who is accredited as a family or child law specialist, in the geographical area that the child is thought to be. Advice is taken from the Law Society of Scotland so that the Central Authority cannot be accused of favouring particular firms, and therefore remains neutral in this process. The application is sent to the solicitor with a certificate entitling the applicant to automatic legal aid. Occasionally there may be some delay where the obtaining of sanction for an expert, e.g. a child psychologist, is required, but the Scottish Legal Aid Board usually deals with all necessary applications promptly.

The Central Authority has internal guidelines to ensure that all incoming cases are turned around and allocated to a solicitor within 24 hours of receipt of the case, and therefore delays are kept to an absolute minimum.

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?

The views of the child may be obtained in a number of ways, none of which are prescribed by rules of court: for instance, by affidavit, by interview by a child psychologist who then reports and may give evidence, or by the child being separately represented before the court, which is not uncommon. If the child seeks to be represented, no exceptional circumstances rule operates. Separate representation for the child has become increasingly common in the case of a child who is of such an age that his views are liable to carry weight.

It is not the practice of judges of the Court of Session to interview children themselves. It would be technically possible, if the court thought it appropriate, to hear the child in evidence, but it would be very unusual to do so. In *W v W*, 2003 SLT 1253 the Inner House highlighted some of the 'potential pitfalls inherent' in interviewing the child in person. The Inner House seemed to be suggesting it would be best practice for the child's views to be ascertained by a person trained or experienced in finding out such information from children.

It should be noted that the Court of Session does not have the services of any organisation such as CAF/CASS (Children and Family Court Advisory & Support Service). CAF/CASS operates in England and Wales and looks after the interests of children involved in family proceedings. To date, the Court of Session has not felt the need for the involvement of an organisation such as this: if a professional assessment of the child's stated position is required, one or both parties will, inevitably instruct a child psychologist to assist. The court will, if necessary, contact such a person directly to request their assistance and that it be provided as a matter of urgency. The need for such a report will usually be addressed at the

first hearing.

- 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?**

We are not aware of any increase in the use of this Article in Scotland.

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.**

No Constitutional procedures or principles have been identified in this respect.

- 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?**

In Scotland, the system for handling access applications has been reviewed. In light of the leading case of *Donofrio v Burrell*, Scotland has amended Rule 70.5(2) which deals with access applications under the Convention. The amendment took effect on 18 September 2001 and preserved the special expedited procedure used in all Convention applications, whilst clarifying the circumstances in which such an application can be brought. In cases pursued under the Convention, legal aid is given on receipt of a valid application.

The Family Law (Scotland) Act 2006 makes provision for the domicile of persons under 16 (s.22); parental responsibility and parental rights are given to unmarried fathers (s.23), and it also makes provision for the effect of a parents' marriage in determining status depending on the law of the domicile (s.41).

- 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 (Article 3 a) and 5 a));**

In *AJ v FJ* (judgment of 29 April 2005 [2005CSIH36]), the Inner House of the Court of Session decided that a mother who had been granted only 'contact rights' by the courts in Scotland had 'custody rights' for the purpose of the Hague Child Abduction Convention because she had the right to determine the child's place of residence (see Article 5). The reason being that sections 2(3) and (6) of the Children (Scotland) Act 1995 confers upon the 'contact' parent the right to grant or withhold consent to the child's removal from the United Kingdom.

In *PUW*, judgment of 19 August 2003, Lady Smith decided that a sheriff court had custody

rights in relation to the child because the unmarried father of the child who had lodged proceedings in that sheriff court was seeking what would amount to custody rights within the meaning of the Convention. In doing so she was following the decision of the House of Lords in *In re H (A Minor) (Abduction: Rights of Custody)* [2000] 2 AC 29. Lady Smith also decided that in terms of Article 8 of the Convention it is possible for the father to apply for a return order even though it is the court that has the custody rights that have been breached under the Convention.

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

In *D v D*, 2002 SC 33, the Inner House of the Court of Session was prepared to proceed on the following basis in determining the question of the 'habitual residence of a child' for the purposes of the Hague Convention: 'habitual residence is a question of fact; that to acquire a new habitual residence it is necessary to spend "an appreciable period of time" in the state concerned; and that while the existence of a settled intention is an important factor, it is not necessary that the settled intention should be to remain in the chosen state permanently or indefinitely but that the intention need only be to remain there for some time.' (at page 40)

In this case the mother, father and child were all resident in Germany but had moved to Switzerland just 5 weeks before the mother took the child to Scotland. The court decided that at the time when the mother took the child to Scotland the child was not habitually resident in Switzerland. The father and mother had no shared intention of having their habitual residence in Switzerland. The court said: 'the period spent in Switzerland was substantially too short and the conditions and circumstances of the parties' living there were too unsettled and uncertain to justify an inference that anyone, particularly the child, had acquired a habitual residence there' (at page 40.)

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

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

In *AJ v FJ*, cited above, the Inner House adopted the test set forth in *Friedrich v Friedrich* (78F 3d 1060 (1996)) that 'if a person has valid custody rights to a child under the law of the country of the child's habitual residence, that person cannot fail to "exercise" those custody rights under the Hague Convention short of acts that constitute clear and unequivocal abandonment of the child.'

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

In *J*, judgment of 23 May 2002, Lady Paton decided that even though the child had been in Scotland for just over 2 years he should be returned to Canada. She applied the test established by the Inner House in *Soucie v Soucie*, 1995 SC 134 at 139, 'in considering the proviso to Article 12 what must be clearly shown is that the settlement in a new environment is so well established that it overrides the otherwise clear duty of the court to order the return of the child.' Despite the fact that the 5 year old child was settled in Scotland and in a primary school there Lady Paton felt the inevitable disruption of sending him back to Canada did not outweigh the primary purpose of the Convention in returning the child to his habitual

residence before the wrongful removal.

- 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));**

The Inner House of the Court of Session, overturning the Lord Ordinary, upheld a claim by the mother that the father had consented to her leaving Australia with their two children. In doing so the Inner House followed the leading English authorities on 'consent' in the context of the Hague Child Abduction Convention. (See *KT v JT*, judgment of 15 October 2003). Lord President Cullen set out the test to be applied at paragraph 14 of his judgment: 'the onus is on the parent who asserts that the removal was with the consent of the other parent to prove that this was so. Proof is on the balance of probabilities, the cogency of the evidence which is required depending on the degree of improbability that consent has been given... The consent has to be real, positive and unequivocal.'

In this case the Inner House found that on the balance of probabilities the father had consented to the mother taking the children to Scotland even though he hoped they would all return. This was because he admitted that when, before she left Australia, his wife said to him that she might get a house and a job and stay in Scotland he had replied: 'If that's what you've got to do to make you happy, then that's what you've got to do'. This was also against a finding that the father accepted that the children should live with their mother.

- h) grave risk (Article 13(1) b));**
- i) exposure to physical or psychological harm (Article 13(1) b));**
- j) intolerable situation (Article 13(1) b));**

In *PW v AL or W*, judgments of 12 June and 7 August 2003, the Inner House of the Court of Session decided that it was not an intolerable situation for children to return to Australia without their mother (due to her not being able to get a visa to go back) but that it would be appropriate to delay execution of the order to return for a short period to ensure that the mother could obtain a visa to return. In this case the Court of Session expressed some concerns that Australia was only able to issue the mother a tourist visa that would not permit her children to have schooling in Australia or provide non-emergency medical care for her and her children.

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

In *W v W*, judgment of 12 June 2003, 2003 SLT 1253, the Inner House of the Court of Session decided that although a nine and a half year old child was of sufficient age and maturity to have her views heard it was not appropriate to take account of her views. The decision whether or not it is 'appropriate to take account of a child's views' being one that judges in Scotland take in any case where the child is old enough to have his or views heard. It is only if it is appropriate to take account of the child's views and the child objects to being

returned that the court should then exercise its discretion under Article 13 whether or not to return the child against that child's wishes. In doing so the Inner House expressly adopted the same approach as the English Court of Appeal in *Re T (Abduction: Child's Objection to Return)* [2000] 2 FLR 192. The matters to establish are as follows: '(1) Whether the child objects to being returned to the country of habitual residence. It is also necessary to ascertain *why* the child objects. (2) The age and degree of maturity of the child. The child has to know what has happened to him or her, and to understand that there is a range of choice available. The child has to have gained a level of maturity at which it can make a decision independent from parental influence. (3) Once a discrete finding as to age and maturity has been made, it is necessary to decide whether it is appropriate to take account of the child's views. That requires an assessment of the strength and validity of those views.' Article 13 requires the courts to determine whether a child 'has attained an age and degree of maturity *at which* it is appropriate to take account of its views' (emphasis added), which suggests that the courts should be asking whether the child is old enough and mature enough for the court to regard it as appropriate to take account of its views, and not be testing the appropriateness of the child's views in isolation.

The approach of the Inner House was followed by Lord Menzies in I.I, judgment of 13 February 2004 and by Lord Hardie in *W*, judgment of 13 August 2003. In both cases the Lord Ordinary decided that it was not appropriate to take account of the views of the child (in the former aged 10 and in the latter aged 12).

However, the correctness of that approach was questioned in *M Petitioner 2005 SALT 2* because it seemed to be envisaged that a qualitative assessment of the child's views would enter into the assessment of whether he was of an age and maturity that his views should be taken into account. Age and maturity should, rather, be considered as a discrete issue, separate from that of whether or not the child's views on the matter of return are such as should be given effect to, something which did not arise until the court was considering whether or not to exercise its discretion *after* having decided that the child was of an age and maturity that his views could be considered.

1) Fundamental principles relating to the protection of human rights and fundamental freedoms (Article 20). (See also 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).

The Central Authority for Scotland has appointed a Hague Liaison Judge and has also stipulated that all direct judicial communication should be fully documented and made available to the parties of a particular case. Ideally, the communication should be made in the presence of the parties' representatives.

As indicated by Lord Justice Thorpe, judges from all UK jurisdictions including Scotland, have participated in essential meetings with members of the judiciary of Pakistan and Egypt. Scotland's Hague Liaison judge believes that the existence of the protocol with Pakistan is proving to be a useful tool in cases of child abduction. To date, the Central Authority for Scotland has had very limited dealings with the UK/Pakistan Protocol. However, it fully welcomes this as a positive step forward in providing a useful mechanism for returning children in non-Convention cases.

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?**

The Central for Scotland has only recent experiences of this in relation to visas. In the case in question the matter was swiftly resolved and was co-ordinated throughout by the Central Authority who dealt with foreign officials to ensure that the parent ordered to return to their country of habitual residence with the child could do so with the minimal amount of delay, given the court order.

- 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?**

No.

- 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?**

Yes. In the relevant case, an applicant needed to apply for significant public benefit parole in the United States in order to gain entry to the U.S.A, to try and secure access.

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.**

The Central Authority for Scotland has only one experience of this issue. In the case in point

the foreign authority stated that criminal proceedings would not be brought against the taking parent if they were ordered to return. The judge in Scotland therefore granted a return order and the taking parent was subsequently arrested when they returned to their country of habitual residence despite the assurances that had been given to the Scottish Court. Had the Court known that this would have been the case then quite arguably an Article 13b defence might have been considered as the child was in the sole care of the taking parent.

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.**

In Scotland, mediation is not generally used in Hague cases. It is a possibility however, and parties may be referred to mediation by a judge or by agreement between the agents. The child abduction charity reunite, carried out a mediation pilot recently. However, the Central Authority for Scotland did not participate.

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

N/A.

- 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?**

The Central Authority for Scotland is of the view that mediation prior to an attempted removal could lessen the likelihood of a return application being made.

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?**

Please see the response from England & Wales to this question.

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

The Central Authority for Scotland held a conference in 2002 for the police and for solicitors to raise awareness of the Convention. Although there is no substantive case evidence that this has influenced any outcomes since that date, there has been a significant increase in

solicitors' general awareness that such an international mechanism exists for the purposes of seeking the return of a child, or securing access. The Central Authority for Scotland also held a number of training events in 2005 on the Brussels II a Regulation and its impact on the 1980 Convention.

The Judicial Studies Committee runs regular training course for all judges in Scotland and family law in general is one of the topics that the Committee plans to include in the programme for forthcoming courses.

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?

There does seem to be a growing incidence of such allegations being made in connection with returns. In a decision taken in a previous Scottish case it was accepted that the test required for this must be robust 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 they might be placed.

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?

The Central Authority for Scotland has limited experience of this. The experience that we do have is that the court will look to the requesting Central Authority to ensure that there are adequate safeguards in place. The requested Central Authority will help co-ordinate the return.

This jurisdiction would anticipate that the court making the return order is wise to see to it that appropriate undertakings such as those regarding accommodation and support are given.

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.

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 Article 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 and these undertakings have related to maintenance or housing in the short term. The

Central Authority for Scotland has experience of undertakings not being adhered to and also has experience of not being able to enforce the undertakings given.

- 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?**

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

- 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)?**

There is very limited experience of seeking or requesting safe harbour orders or mirror orders but the principle is sound.

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

In certain cases, undertakings have not been adhered to by parties and are generally not enforceable in other jurisdictions.

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

No.

- 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, a decision on this was given in a case at first instance, but this decision was reversed on appeal on the basis that the judge should have considered whether it was possible to enable the mother to return by obtaining a visa for her from the Australian authorities, and provided that execution of the return order should be suspended pending the obtaining of the appropriate visa. .

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?**
- 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?

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?

Please see the response from England & Wales to this question.

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 guide has not been used to date.

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?

N/A.

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?

The Central Authority for Scotland has access to copies of the guide.

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.

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).

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, Prel. Doc. No 5 of July 2002 available at: < www.hcch.net > → Conventions → Convention 28 → Practical Operation

Documents.)

Please see the response from England and Wales to this question.

- 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)?**

Please see the response from England and Wales to this question.

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

Please see the response from England and Wales to this question.

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

No.

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?**

Please see the response from England & Wales to this question.

- 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.

- 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 7 Central Authorities in 6 Contracting States?**

No, special casework software is not currently used although there are plans to develop a database for the accurate recording of case statistics in the near future. The Central Authority for Scotland is unable to use the iChild software due to IT security restrictions.

Publicity / debate concerning the Convention

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?

No.

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

No.

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

- Scottish Executive website
- Booklets and information flyers are regularly sent to solicitors, parents, Citizens Advice bureaus, Courts.
- We have also recently made our child abduction flyer available in Scotland's main airport.

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?

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U.K

Services provided by the Permanent Bureau

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:

INCADAT;

This is a useful service, although it is rarely used by Central Authority staff in Scotland.

a) the Judges' Newsletter on International Child Protection;

This is a useful method of disseminating information amongst interested parties.

b) the bibliography of the Convention;

This is a useful tool.

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

This is a useful source of information, although sometimes contact details for Central Authorities are not current.

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

This will be a useful tool for monitoring trends.

e) iChild (the electronic case management system designed by the Canadian software company Worldreach, which is currently being piloted by 7 Central Authorities in 6 Contracting States).

This is a good idea in principle, where all Contracting States are in a position to sign up to the system.

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

g) support for communications among Central Authorities, including maintenance of updated contact details.

53. Have you any comments or suggestions concerning the activities in which the Permanent Bureau engages to assist in the effective functioning of the Convention?

No.

Compliance with the Convention

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

Please see the answer to Question 2.

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

No.

Non-Convention cases and Non-Convention States

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

We are not aware of any as we deal exclusively with Convention cases. All non-Convention cases are dealt with by the Foreign and Commonwealth Office. If the Central Authority for

Scotland is contacted with a query on a non-Convention case, officials will explain that it cannot deal with the case directly. However, the Central Authority can help co-ordinate with the FCO. As far as the UK/Pakistan Protocol is concerned, there is extremely limited involvement by the Central Authority for Scotland with individual cases as these are primarily dealt with by the Foreign and Commonwealth Office.

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?

We would support Lord Justice Thorpe's suggestions (Please see the response from England & Wales to this question).

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

Please see the response from England & Wales to this question.

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

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*?

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*?

Please see the response from England & Wales to this question.

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

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?

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?

The United Kingdom's ratification of the 1996 Convention is dependant on all EU Member States ratifying together.

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

Please see the response to Question 63 above.

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

Please see the response to Question 63 above.

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?

Please see the response to 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.**
- 68. States are invited to make proposals concerning recommendations to be made by the Special Commission.**