



QUESTIONNAIRE ON THE ENFORCEMENT OF RETURN ORDERS UNDER THE 1980 HAGUE CONVENTION AND OF ACCESS / CONTACT ORDERS

At the Special Commission concerning the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* which was held at The Hague from 27 September to 1 October 2002 the following recommendations were made:

"The Permanent Bureau should continue to gather information on the practice of the enforcement of return orders in different Contracting States. The Permanent Bureau should prepare a report on this subject with a view to the development of a guide to Good Practice"

"Work should continue on a separate chapter of the Guide to Good Practice relating to transfrontier access/contact in the context of the 1980 Convention with the following objectives:

- a. to promote consistent and best practices in relation to those matters which it is agreed fall within the competence and obligations of States Parties under the Convention,
- b. to provide examples of practice even in relation to matters which fall within the disputed areas of interpretation.

Work should begin on the formulation of general principles and considerations. The idea is not to create a set of principles applying to access cases generally, but rather to draw attention to certain general considerations and special features, which need to be borne in mind by Contracting States and their authorities when formulating policies in respect of international access / contact cases. These general principles would not be binding; they would be advisory in nature. As well as offering general advice to States in formulating policy in this area, the general principles could be helpful to Central Authorities in informing their practice, they could possibly be helpful to the courts and other authorities, as well as to applicants as they present their cases."

Arising from these recommendations, the Permanent Bureau has entered into a joint initiative with Professor Nigel Lowe of Cardiff University, supported by the International Centre for Missing and Exploited Children in relation to the enforcement of return and access / contact orders. The role of Professor Lowe and the Cardiff Team (comprising of Samantha Patterson and Emily Atkinson) is to undertake extensive empirical research on the practice of enforcement of Hague Convention orders (including access orders) in a number of Contracting States. The research will also focus on identifying areas of good practice in the context of enforcement. Professor Lowe and the Cardiff team will then prepare a report on the empirical research.

At the same time, the Permanent Bureau will be undertaking comparative research on the internal law and practice with regard to enforcement in each Contracting State by way of the questionnaire which appears below. This will assist in identifying structural and practical problems with enforcement. The Permanent Bureau will then prepare a report on the enforcement of return orders which will also consider whether the development of a Good Practice Guide on enforcement would be useful. This report will be presented for the consideration of the next Special Commission meeting tentatively scheduled for autumn 2005. The Permanent Bureau is also preparing, for consideration at the same meeting, the general principles and separate chapter of the Guide to Good Practice relating to transfrontier access / contact.

The questionnaire which appears below is addressed to States Parties to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*. We would like to draw your attention to the fact that, while the questions in Chapters I–VII are specifically addressing the enforcement of return orders made under the 1980 Convention, Chapter VIII invites you to also indicate, for each reply, whether the same applies to the enforcement of contact orders. If this is not the case, please give details concerning the latter.

Respondents are also invited to identify and comment on matters concerning enforcement, which are not addressed specifically in the questionnaire. Where information is available on websites, please also provide the website address.

The Permanent Bureau requests responses to the questionnaire to be sent to secretariat@hcch.net with a copy to as@hcch.nl no later than **30 October 2004**, if possible in electronic form.

I. LEGAL BASES FOR THE ENFORCEMENT OF HAGUE RETURN ORDERS

1. Please give details of any *specific* legislative provisions which exist in your State concerning the enforcement of return orders under the 1980 Hague Convention. Please specify the title of the instrument, its legal nature (law, decree, administrative regulation or rules of court etc.) and short description of content.

None.

2. Please give details of any *general* legislative provisions which exist in your State concerning the enforcement of court orders in the area of family law and govern the enforcement of return orders under the 1980 Hague Convention (either in the absence of specific provisions under question I.1 or in addition to any such specific provisions). Please specify the title of the instrument, its legal nature (law, decree, administrative regulation or rules of court etc.) and the content of the relevant provisions.

It is a contempt of court to fail to obey an order of the court, punishable with imprisonment.

3. Please give details of any judicial decisions, practice directives or guides concerning the enforcement of court orders in the area of family law that govern the enforcement of return orders under the 1980 Hague Convention (either in the absence of specific provisions under question I.1 or in addition to any such specific provisions).

None in the Isle of Man but regard would be had to relevant decisions, etc of the courts in the United Kingdom.

4. Do you have any other comments relating to the law governing enforcement of Hague return orders, including any comments on the effectiveness of these rules?

No.

II. ENFORCEABILITY AND LEGAL REMEDIES

1. a) Is a Hague return order subject to appeal or other forms of challenge? Please give details (number and character of legal remedies, possible time-limit for them, possible time-limit for appellate court or court of appeals to decide etc.).

Yes – by appeal within six weeks to the appellate court. There is no specific time limit for hearing such an appeal but it is likely that the hearing of an appeal against a Hague return order would be expedited.

- b) Please specify whether any such challenge may only be made once, and which court or body has jurisdiction to hear the appeal.

Only one challenge is possible – to the Staff of Government Division (the Island's Court of Appeal).

2. a) Please give details of any authorisation or other decision required for the actual enforcement of the Hague return order (e.g. registration for enforcement, declaration of enforceability, order of a specific enforcement measure or other).

None.

- b) Which is the competent organ for these decisions?

N/A

3. Does the Hague return order have to be final and no longer subject to ordinary appeal before any authorisation for enforcement or other measure specified under II.2 may be ordered?

N/A

4. a) Are any of the decisions specified under II.2.a) (authorisation to enforce or other decision) subject to appeal independent of any appeal against the merits of the return order? Please give details (number and character of legal remedies, possible time-limit to lodge them, possible time-limit for appellate court or court of appeals to decide etc.).

N/A

- b) Please specify whether any such challenge may only be made once, whether it suspends the enforceability / enforcement of the order and which is the court or body to decide the appeal.

N/A

5. If in your State both types of legal remedy as specified under II.1 and II.4 (*i.e.* against the order on the merits and against any decision taken at or required for the enforcement stage) exist, can they be lodged simultaneously? Is it the same court that deals with them if they are lodged (a) simultaneously, and (b) at different times?

N/A

6. Do you have any other comments relating to legal remedies and the enforcement of Hague return orders?

No.

III. ENFORCEMENT PROCEDURE

A. The order to be enforced and the aims of enforcement

1. If an application for return of a child under the 1980 Hague Convention is successful, what is normally ordered:
- the surrender of the child to the applicant (if necessary, "for the purposes of returning the child to his / her State of habitual residence")
 - the return of the child to State X
 - other?

b) the return of the child to State X.

2. If such order has to be enforced, please specify which of the following is / are normally the aim of enforcing a return order:
 - a) to remove the child from the abductor or any other person
 - b) to hand the child over to the applicant or a person designated by him or her in the State where enforcement takes place
 - c) to ensure the child's return to his or her State of habitual residence
 - d) other.

c) to ensure the child's return to his or her State of habitual residence.

3. Whose responsibility is it to organise the repatriation of the child?

The applicant's.

B. Actors involved in enforcement

1. Once a return order is made, is a specific request for enforcement necessary?

No.

2. Please specify who initiates enforcement of the court's return order:

- a) the applicant (in person or through his or her lawyer)
- b) the Central Authority
- c) the court
- d) the enforcement organ itself
- e) other.

a) the applicant.

Where the law leaves choices or discretion, please give details concerning actual practice.

3. a) Please give details of the persons, organs and institutions (e.g. enforcement organs, court, parties, psychologists, social workers, Central Authorities, other) involved in the enforcement of return orders under the 1980 Hague Convention
 - i) according to the law
 - ii) in practice.

Please describe their respective roles and functions in enforcement, and whether their participation is mandatory. If this is not the case for some or all of the actors mentioned, please specify who decides about their respective participation and to what extent they are normally involved in Hague return cases (regularly or exceptionally and, in the latter case, depending on which conditions).

i) according to the law, the parties/organs involved in enforcement proceedings would be the applicant (whose legal representation is arranged by the Central Authority), the defendant and the court which made the return order.

ii) in practice, social services, the police and other agencies would also become involved, should the interests of the child require it. The extent of their involvement would depend on the circumstances of the case.

- b) In particular, are any social or psychological services available in order to prepare the child and / or the defendant for the return in order to de-escalate or even avoid enforcement by coercive measures?

Yes, such services would be available, should they be required.

- c) Please specify also whether presence of the applicant (or a person designated by him or her) is required and, if this is the case, at which stage of the enforcement proceedings and for what purpose.

The applicant's legal representative would have to be present during any court proceedings but otherwise there is no requirement for the applicant or his/her representative to be present for the enforcement of the order to take place.

4. a) Is there any supervision / control of the enforcement procedure by a court, the Central Authority or any other State authority? If a court is supervising / controlling the enforcement procedure, which court is it? The court that made the order or other (e.g. a specific enforcement court)?

The control of the enforcement procedure rests with the court which made the return order.

- b) What if the court of first instance refused return, and the appellate court or court of appeals ordered return? Would the court of first instance, the appellate court or court of appeals which ordered return, or any other court be the court supervising / controlling enforcement in such a case?

See 4 a).

C. The enforcement procedure proper

1. Is there a timeline for enforcement?

Any timeline would be at the discretion of the court making the return order and would depend on the circumstances of the case.

2. Is it normal to allow a period of time for voluntary compliance with a return order or to allow appropriate practical arrangements for the return of the child to be made?

See C1.

3. Are any measures available in order to prevent the abductor from taking the child into hiding after the return order is made and before it can be enforced? In the affirmative, please give details.

If there was any risk of the child being taken into hiding, the court could order that certain steps be taken, eg. that the child reside with a third party with supervised contact with the abductor, until the return order is enforced.

4. What happens if the child is taken into hiding after the order was made and before it can be enforced? Which actors would be involved (e.g. Central Authority, police, public prosecutor, other) and which measures can they take to locate the child? What is the effect of the hiding on a possible timeline for enforcement?

The police and social services would be involved. The police would make enquiries to establish the whereabouts of the child and would have the power to remove the child to a place of safety. Further, if the abductor was in contempt of the return order, the court would be able to issue a warrant for his/her arrest, which would be enforced by the police, and he/she would then be brought before the court.

5. When enforcement is initiated, what are the required steps (e.g. measures by the applicant, the court or any other supervisory authority, and the enforcement organs)?

The applicant/the applicant's legal representative would make a complaint to the court. The court would then require the attendance in court by the defendant (either voluntarily or by the issuing of a warrant for arrest). The court would then determine whether the defendant is guilty of contempt and whether a penalty should be imposed.

6. Which coercive measures are available and under what conditions (e.g. pecuniary fines, physical force [against whom? the child? the defendant? others?], detention)? Which of these are normally used in practice?

The penalty for contempt of court is detention, either for a specified time or until the defendant has "purged his or her contempt" and agrees to comply with the court order in question.

7. a) Do they have to be ordered specifically (i.e. either "fine", "physical force", "detention")? If so, when and by whom?

a) Yes, by the court whose order has not been complied with.

- b) If problems occur during enforcement, may the enforcement organs unilaterally "upgrade" the intensity of coercive measures, or do they have to obtain authorisation from any particular higher authority (e.g. an enforcement court or other)? Please specify.

b) No higher authority is required. The court could "upgrade" the intensity of the coercive measure of its own volition.

8. Please give details of any court orders which can be obtained in emergency situations. Can these orders be obtained after hours and *ex parte*?

Should the circumstances so require, the proceedings described at C3 and C5 could be brought before the court after hours and ex parte.

D. Costs

1. Are costs incurred for the enforcement? If so, are they part of the costs of the court proceedings as a whole? How are they calculated? For which services are they charged?

The only costs would be the legal costs of the parties themselves. Legal aid is available to the applicant in Hague Convention proceedings, without any contribution required from him/her, and that legal aid would cover the costs of any enforcement action. The defendant would be responsible for his/her own legal costs, unless he/she qualified for legal aid on the usual grounds applicable to domestic proceedings.

2. Who has to pay the costs for enforcement? To whom? Is a reduction or exemption possible, e.g. under a Legal Aid Scheme? Under which conditions? In particular, is advance payment required in order for the enforcement organs to act? If legal aid was granted for the proceedings leading to the return order, would it cover the enforcement stage or would the application for legal aid have to be renewed?

See D1.

3. Are the costs of the actual repatriation of the child (e.g. airfare for child and possible accompanying person) considered as part of the enforcement costs? Who has to pay for the repatriation? Is advance payment a condition for enforcement?

The costs of repatriation would have to be paid by the applicant although Social Services would be able to assist with such costs should the applicant not have the financial resources to meet them.

4. Please specify how foreign applicants are provided with information about enforcement costs to be borne by them.

The Central Authority provides information on request but is currently in the process of preparing a leaflet and consideration is being given to publishing information on the worldwide web.

5. Please provide details regarding the enforcement organs' specific duties as they relate to the enforcement of Hague return orders concerning children.

See B3 above.

6. Do you have any other comments relating to the enforcement procedure?

No.

IV. STATISTICAL INFORMATION

1. How many Hague return orders that you are aware of were made per year in your country in 2001, 2002 and 2003? How many of them had to be enforced in each of these years because the abductor did not comply voluntarily with the order? Please give the figures for each year separately.

One Hague return order was made in 2003. No enforcement action was necessary. No orders were made in 2001 or 2002.

2. How many Hague return proceedings were pending in your country that you are aware of for 2001, 2002 and 2003? Please give figures per year. In how many of these cases was a legal challenge made in order to avoid enforcement (by challenging either the order on the merits, the declaration of enforceability, a particular enforcement measure or other)? If possible, please specify the type of challenge (on the merits or against an enforcement measure).

Two Hague return proceedings were pending in 2003. In one case, the applicant and the defendant reached agreement regarding the residence of the child and the proceedings were withdrawn. In the other case, a return order was made, which was complied with without the need for enforcement action. There were no Hague return proceedings in 2001 or 2002.

3. How many of the legal challenges at the enforcement level (*i.e.* not on the merits) were ultimately successful (*i.e.* the order was not enforced)?

N/A

4. What is the average length of enforcement proceedings from the moment the order is made until the moment the child is (a) removed from the abductor and (b) repatriated?

N/A

V. CO-OPERATION

1. Please give details of any co-operative agreements existing between different agencies within your State, either formally or informally, with regard to the enforcement of Hague return orders. How did this co-operation develop?

There are no formal agreements but there informal working arrangements involving social services, health services, education and the police in relation to child care issues of all types.

2. Please give details of any co-operative agreements with other States, either formal or informal between different Central Authorities or agencies, or at the judicial level, with regard to the enforcement of Hague return orders. How did this co-operation develop?

None.

3. Please provide details (including contact details, websites etc.) of all agencies in your State which have a role to play in the enforcement of Hague return orders.

The Family Protection Unit, Isle of Man Constabulary, Police Headquarters, Glencrutchery Road, Douglas, Isle of Man, IM2 4RG, tel +44 1624 631212

Social Services Division, Department of Health and Social Security, Hillary House, Prospect Hill, Douglas, Isle of Man, IM1 1EQ, tel +44 1624 686179

Office of the High Court, Isle of Man Courts of Justice, Deemsters Walk, Bucks Road, Douglas, Isle of Man, IM1 3AR, tel +44 1624 685265

4. Do you have any other comments relating to co-operation, including any comments on the effectiveness of co-operative agreements?

No.

VI. TRAINING AND EDUCATION FOR PROFESSIONALS

1. Please give details of any training or education that is available in your State for professionals (including, judges, Central Authority personnel, lawyers, mediators, enforcement organs [e.g. bailiffs], police officers, and social workers) as a means of preparing them to enforce Hague return orders or decisions in family law matters in general.

There is no specific training regarding the enforcement of Hague return orders but general training which the various professionals receive to enable them to carry out their work regarding family law matters generally provides them with the necessary skills.

2. Who provides this training and education?

Some of the training is undertaken as part of the professional qualification required for the person to undertake such work. Other specialist training is provided by the employer as required.

3. What form does this training take and how regularly does it occur? Does joint training of different professional groups which have to co-operate in the enforcement of Hague return orders (e.g. judges, bailiffs, police officers, social workers) also occur?

See 2. above. There is no joint training.

4. Do you have any other comments relating to training and education of professionals, including any comments on the effectiveness of this training and education as a means of facilitating the enforcement of Hague return orders?

There is no reason to believe that the fact that no specific training in relation to the enforcement of Hague return orders is given has any detrimental effect on the ability of the professionals concerned to undertake such work as they are all experienced in working with child care and family law issues.

VII. OTHER INFORMATION

1. Please give details of any web pages, and provide copies of any brochures, or information packs or similar materials which contain information or advice on the enforcement of Hague return orders in your State and which are available to parents, including applicants from abroad.

The Central Authority is currently in the process of preparing a leaflet regarding Hague Convention proceedings as a whole and consideration is being given to publishing information on the worldwide web. Information is already available on the United Kingdom Government Child Abduction Unit's website which is equally applicable to the Island and the site gives contact details for the Island's Central Authority.

2. Who provides this information? When was it compiled? When was it last updated? How is the information made available and in which language(s)?

See 1. above.

3. Do you have any other comments relating to information for parents, including any comments on whether such information is effective in assisting the left-behind parent in having his or her return order enforced?

No.

4. Please provide any other information which may be relevant to the issue of the enforcement of Hague return orders.

None.

5. Please provide details of any other bodies or authorities in your State who may have information useful to the research covered by this questionnaire.

None.

6. Have you any general comments to make regarding the enforcement of Hague return orders?

No, save that we have not experienced any cases where a Hague return order had to be enforced and therefore we cannot make any specific comment as to the effectiveness, in relation to the enforcement of Hague return orders, of the procedures available within this jurisdiction for the breach of court orders relating to children and family law issues generally.

7. Are there any changes envisaged in your legislation and / or practice? If this is the case, please give details in the answer to the respective question and indicate as of when such changes will take effect.

No.

VIII. ORDERS GRANTING RIGHTS OF CONTACT / ACCESS / VISITATION

For each reply, please indicate whether the same applies to the enforcement of contact orders. If this is not the case, please give details concerning the latter.

The situation is exactly the same in respect of contact orders as it is in respect of return orders. No Hague contact orders were made in the Isle of Man in 2001, 2002 or 2003.

Where the contact order refers to a specific period of time (*e.g.* where the child is to spend "the first part of the 2004 summer holidays from 1 to 20 July 2004" with the applicant) and is not complied with, please explain also whether coercive measures can be applied only as long as the period mentioned in the order contact has not yet expired (*i.e.* in order to implement the order), or also afterwards (*i.e.* as a sort of punishment although contact during this particular period can no longer be implemented). Please indicate also whether the same rules apply to the enforcement of domestic and foreign contact orders. If this is not the case, please specify the differences.

There is no distinction between the enforcement of domestic and foreign contact orders. Failure to comply with any court order is a contempt of court punishable with imprisonment.

The Permanent Bureau would like to thank you for taking the time to consider this questionnaire. If you have any further questions or comments please do not hesitate to contact us at as@hcch.nl.