

President's Guidance of 10 November 2014: The International Child Abduction and Contact Unit (ICACU)

10 NOV 2014 I am aware that an increasing number of children cases have an international element and that courts often require information from other jurisdictions before being able to proceed. It is not always easy to know how to obtain this information.

While it may not always be possible to obtain the information sufficiently quickly to enable the court to hear these cases within 26 weeks, I am very grateful to the International Child Abduction and Contact Unit (ICACU) for providing the following, which will help practitioners to follow the correct route to obtain information to help the court when necessary. It has been approved by Lady Justice Black and the Senior Master.

Practitioners will also need to be alive to Chapter VI of Part 12 of the Family Procedure Rules 2010 as amended, and to The Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010.

Sir James Munby
President of the Family Division
10 November 2014

The ICACU

The ICACU is the operational Central Authority for England and Wales for Council Regulation (EC) 2201/2003 ('Brussels IIA' or 'the Revised Brussels II Regulation') and for England only for the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children ('the 1996 Hague Convention').¹

The ICACU provides a standard response/leaflet to enquiries about requests for co-operation from local authorities explaining about other sources of assistance including where to find information and contact details of other bodies which may be able to assist. A copy of that standard response/leaflet is attached as it is a helpful resource.

Can the ICACU help?

The ICACU is a small administrative unit. Its staff are not lawyers or social workers. The ICACU cannot give legal advice.

The ICACU may however be able to help by making a request for co-operation to another country, in particular for the collection and exchange of information if the other country is:

- (a) either a Member State of the European Union (other than Denmark); or
- (b) a State Party to the 1996 Hague Convention;

and

- (c) the request for co-operation is in scope of the Revised Brussels II Regulation or of the 1996 Hague Convention

To decide if the proposed request for co-operation is in scope consider Articles 1, 53-57 of the Revised Brussels II Regulation and Articles 1, 3, 4, 30-37 of the 1996 Hague Convention.

ICACU can have a role in relation to transfers between courts under Article 15 of the Revised Brussels II Regulation or authorities under Articles 8 and 9 the 1996 Hague Convention; this role is not covered by this 'view'.

Requests for co-operation involving the collection and exchange of information under Article 55 of the Revised Brussels II Regulation or under Article 34 of the 1996 Hague Convention must be distinguished from requests for evidence.

If making a request under the 1996 Hague Convention consideration should be given to Article 37 of the 1996 Hague Convention before deciding to contact the ICACU.

If considering placement of a child in another country:

- for an EU Member State you should consider Article 56 of the Revised Brussels II Regulation and the decision of the Court of Justice of the European Union ('CJEU') on the operation of Article 56 in case C-92/12 PPU;
- for a 1996 Hague Convention country you should consider Article 33 of the Convention.

Whether or not placement of a child in another country is considered to be placement in institutional care or with a foster family, is a question for the requested country not for the requesting country. A placement which from a domestic perspective is a private law placement may be regarded as a public law placement by the requested country. A request for co-operation can be made to establish if, in principle, the consent of the other country would be required for placement even if the care plan for the child is not yet fully informed.

The ICACU may have practical knowledge and experience of the processes and procedures in the other country which it can usefully share in response to an enquiry. However before relying on information formerly provided by the ICACU in another case you should bear in mind that the other country's processes and procedures may have changed since you last contacted the ICACU.

If your request is not in scope of the Revised Brussels II Regulation or of the 1996 Hague Convention, it *may* be in scope of another European Regulation or international Convention and another central authority or body may be able to assist.

For example, in England and Wales:

The **Senior Master** is:

(a) the transmitting agency under Article 2 of Council Regulation (EC) No 1393/2007 of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, ('the Service Regulation')

(b) the central authority under Article 3 of the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters ('the 1965 Hague Convention')

(c) the central body under Article 3 of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters ('the Taking of Evidence Regulation')

(d) the central authority under Article 2 of the 1970 Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters ('the 1970 Hague Convention').

The administrative unit which supports the Senior Master is the Foreign Process Section based in the Royal Courts of Justice.

Member States have differing views as to what comes within scope of the Revised Brussels II Regulation and what comes within scope of the Taking of Evidence Regulation. If you are in doubt this may be where the ICACU's practical knowledge and experience of the other country's processes and procedures can be of assistance. In such cases you should make an

early enquiry to avoid delay at the point the formal request needs to be made.

The **UKCA-ECR** is the central authority for the exchange of criminal records between Member States of the European Union.

What the ICACU does not do

As the ICACU has no role to play in the operation of:

- the Service Regulation, or of
- the 1965 Hague Convention,
- the ICACU will not serve or arrange service of court documents and nor will its counterpart in the other country.

As the mechanism for the taking of evidence abroad is in the Taking of Evidence Regulation or the 1970 Hague Convention, the ICACU will not assist in acquiring evidence.

Please note that the ICACU does not forward requests for co-operation on to other domestic central authorities or bodies when it receives a request which is outside the scope of the Revised Brussels II Regulation or of the 1996 Hague Convention.

The ICACU does not notify consular authorities about proceedings concerning a child of a foreign nationality either pursuant to ***Re E (Brussels II Revised: Vienna Convention: Reporting Restrictions) [2014] EWHC 6 (Fam)***, [2014] 2 FLR 151 or at all as that is not a central authority duty or function. Consular authorities, not the ICACU, should also be contacted about passports and other travel documents such as visas.

A request for an opinion on jurisdiction is not a question for central authorities. The ICACU will not offer an opinion on jurisdiction and nor should a question about jurisdiction form part of a request for the collection and exchange of information.

The ICACU will not transmit a request for formal criminal record checks as that is a request properly directed to the UKCA-ECR.

The ICACU does not become directly involved in the court proceedings. Central authorities are not under any obligation to engage in proceedings and do not require a court order before discharging their duties and responsibilities under the Revised Brussels II Regulation or the 1996 Hague Convention.

¹ The ICACU is also the operational Central Authority for the 1980 Hague Convention on the Civil Aspects of International Child Abduction and the 1980 Hague European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and Restoration of Custody of Children.

Contacting the ICACU

The ICACU's general office telephone number is 0203 681 2608 and can be used by parties seeking "in principle" advice based on the ICACU's experience of the other country. However the ICACU prefers contact to be made by email using the email address: **icacu@offsol.gsi.gov.uk**.

Email contact allows the ICACU to manage their busy workload and to collate information about the types of requests and countries. If an enquiry is made by telephone the ICACU will usually ask that the enquiry also be put in writing but understands that if a matter is urgent a telephone enquiry may first be necessary.

Making a request for co-operation

Requests for co-operation need to be **relevant, focussed, timely** and **practical**.

You should specify whether the request is being made under the Revised Brussels II Regulation or under the 1996 Hague Convention. You should identify in your request the Article(s) relied on by you for the purpose of making the request. Remember that the request needs to be in scope of the Revised Brussels II Regulation or the 1996 Hague Convention.

Requests for co-operation should be made as early as practicably possible. There is nothing in the Revised Brussels II Regulation or the 1996 Hague Convention which requires a requested State to respond to a request for co-operation within a particular timescale. The ICACU cannot compel the requested central authority or foreign competent authorities to respond within a specific timetable but their counterparts are more likely to be able to offer assistance if the request is focussed and made on a timely basis. The ICACU therefore asks that any request for co-operation is made as early as practicable in the proceedings and that it is informed about the court timetable including the date of any listed hearing.

When fixing the court timetable the timescale for a response from the other jurisdiction needs to be realistic having regard to the number of steps involved in a request for co-operation. In a public law case those steps may involve:

- the decision to make a request for co-operation by the local authority whether following the court's direction or otherwise;
- request received by the ICACU;
- the ICACU requesting any necessary translations;
- the request being transmitted by the ICACU to the requested central authority;
- the requested central authority making any enquiries directly or of its competent authorities to enable it to respond;
- the requested central authority or the ICACU arranging any necessary translations of the response;
- the ICACU transmitting the response to the local authority here;
- the initial response from the requested central authority *may* include a request for additional information and documents in order to enable a more detailed response to be provided.

A sealed copy of any relevant court order should be provided to the ICACU promptly (to assist in avoiding delay).

In formulating the request for co-operation you should give consideration to what information practically the requested central authority and their competent authorities may require in order to respond to the request. A clear background case summary will assist. You should always provide the full name and date(s) of birth of the child(ren) and of any relevant adult and an explanation of the family relationship(s). If the case involves a more complex family structure (full, half or step siblings, different generations in the same household etc) then a genogram is likely to be of assistance. Additionally:

- for the benefit of the requested central authority you should explain technical language (for example what is meant by section 20 consent) and acronyms;
- for kinship care assessments it may be useful to explain what the local authority or court would find helpful for the assessment to cover but it is unlikely to be appropriate to ask foreign authorities to complete domestic forms;
- for requests to identify potential kinship carers provide as much information as possible to assist the requested State to trace the individuals concerned; if current contact details are not known, then the last known address in the requested country (or as much information as possible as to where the family is from in that country), social security details or passport / foreign identity document details may also assist;
- only the documents relevant to the request should be sent; it is not usually necessary for the whole court bundle to be provided;
- if the court's permission is required to disclose information or documents to the ICACU and to the requested central authority the permission application should be made promptly.

The ICACU has a limited budget for translations. It will arrange translation of the request for co-operation but the parties to the court proceedings will need to agree who is to prepare translations of any supporting documents.

If the welfare plan for the child is for placement in the other country you should check if that country's consent to the placement is required under either Article 56 of the Revised Brussels II Regulation or under Article 33 of the 1996 Hague Convention. Whether or not consent is required is a question for the other country. If there is any doubt about whether the consent of the other country will be required a request for co-operation can be made in order to clarify the position.

The ICACU does not require a court order in order to discharge its duties and functions as the operational central authority but it may be helpful if the court directs one party to the proceedings to make the request for co-operation to the ICACU and to do so within a particular time frame. The parties may of course consult with each other as to the content of the request for co-operation.

In public law children cases the ICACU prefers that the local authority (rather than any other party) contact the ICACU about a request for co-operation (or any other request - for example, assistance with an Article 15 transfer request). The ICACU's experience is that a request for co-operation to the other country may be followed by a request from that country about the same child. If the ICACU receives a request from the other country it will transmit it to the local authority and it is administratively more efficient and less likely to give rise to miscommunication if the ICACU is in contact with one party only.

Although the court may request or invite assistance from foreign authorities orders should not be made against foreign authorities including central authorities, consular authorities or other public bodies in another country.