

COVID-19: Temporary Amendments to the Practice Guidance on Case Management and Mediation of International Child Abduction Proceedings

1. Introduction

1.1. Following the issuance of the President's Guidance entitled **COVID 19: National Guidance for the Family Court** dated 19 March 2020 it is necessary to temporarily amend the operation of the Practice Guidance on Case Management and Mediation of International Child Abduction Proceedings.

1.2 These amendments to the operation of the Guidance will apply until further notice. Save as provided herein, the remaining aspects of the Practice Guidance on Case Management and Mediation of International Child Abduction Proceedings will continue to apply.

2. ICACU

2.1 ICACU are working remotely and are encouraging other Central Authorities to submit applications by e-mail as ICACU has no physical presence at their offices in line with the current Government guidance on social distancing. Any documents sent by post, DX or fax will not be received by ICACU until this changes. The ICACU general email address for new applications and enquiries is ICACU@ospt.gov.uk.

3. The Legal Aid Agency

3.1 The Legal Aid Agency are currently operating a normal service and have in place contingency plans for continued operation. The LAA recognises that obtaining evidence for financial assessments for respondents may present difficulties and the contracts with solicitors permit the assessment of means without provision of the evidence. The LAA have published guidance which can be found at <https://www.gov.uk/guidance/funding-and-costs-assessment-for-civil-and-crime-matters>.

4. Issue Procedure – All Applications

4.1 Until further notice, all applications may be issued as, in effect, without notice applications and heard in the urgent applications court subject to the President's Guidance entitled COVID 19: National Guidance for the Family Court. In the circumstances, the operation of paras 2.1 and 2.2 of the Practice Guidance with respect to without notice applications (which prescribe the strict circumstances in which such applications are permitted) is suspended.

4.2 The operation of Paragraphs 2.9 and 2.10 of the Practice Guidance with respect to on notice applications in child abduction proceedings (which paragraphs provide for the system of giving standard paper directions on issue of on notice applications) is suspended.

4.3 The public counter in the Clerk of the Rules office is currently closed due to the national health emergency. Solicitors, who have an HMCTS payment account, commonly called a PBA, electronic issuing is possible via rcj.familyhighcourt@justice.gov.uk. The application notice or the covering email should indicate that it is an application to be issued electronically and should contain the following in the email subject line: **URGENT: NEW 1980 HAGUE CONVENTION APPLICATION FOR ISSUE**. Otherwise, the applicant will need to invite

the court to address the question of the issue of proceedings in the first order (and a provision included in the draft).

4.4 Pursuant to para 3.14 of the Practice Guidance, all applications, howsoever issued, must be accompanied by a proposed draft order in Microsoft Word format setting out the standard directions proposed and dealing with the matters referred to in para 2.9 (b) to (j) of the Practice Guidance. A template order is included for guidance at Appendix 1 to this Practice Guidance (which will need to be adjusted by the applicant as required for the case).

5. Service

5.1 Parties will be permitted to serve orders prior to them being sealed by the office of the Clerk of the Rules. Each order will be endorsed with a statement that the order is effective without a seal and may be served pending the court sealing the order.

5.2 Effecting personal service should only be attempted if safe so to do. Otherwise, substituted service by e-mail or posting through letterbox will be considered sufficient in the first instance (and a provision to this effect should be included in orders), subject to any other direction of the court.

5.3 A copy of this Temporary Practice Guidance should be included with the order for service on the respondent together with a copy of the President's Guidance entitled COVID 19: National Guidance for the Family Court dated 19 March 2020.

6. Child Abduction Mediation Scheme

6.1 The operation of Paragraphs 3.1 to 3.3 which provide for the operation of the court based Child Abduction Mediation Scheme are suspended *only* insofar as they provide for face to face mediation at court. The Child Abduction Mediation Scheme will continue in all other respects to be operated by Reunite remotely.

6.2 The operation of Paragraph 2.5(a) is suspended. Each party will be expected, prior to the first on notice hearing, to make contact with Reunite by email on reunite@dircon.co.uk or by telephone on 0116 2555 345 in order to consider mediation.

7. Participation of the Child

7.1 The Cafcass High Court Team are able to, and have commenced interviewing children remotely. The Cafcass High Court Team has access to Skype for Business to permit them to give evidence by way of video.

7.2 The Cafcass High Court Team will continue to receive papers electronically and henceforth all papers should be provided to them in electronic format. The email address is highcourtgm@cafcass.gov.uk.

8. Hearings

8.1 All hearings will take place subject to and in compliance with the provisions of the President's Guidance entitled COVID 19: National Guidance for the Family Court dated 19 March 2020. To this end, each order should contain a form of words prominently displayed (in bold) on the front page of the order stating that the next hearing, unless there is a direction by the Judge otherwise, will take place remotely (that is to say the Judge, the parties and, where

relevant, their representatives, will attend the hearing in different locations but by means of technology). Upon such an order being made, each party and/or their representatives must take immediate steps to obtain or ensure that they have access to appropriate technology in preparation for that hearing.

8.2 Within this context, not less than 48 hours before the hearing the solicitor for the applicant is expected to contact the respondent or his or her legal representative to make arrangements for the hearing to take place remotely if required and to co-ordinate those arrangements with the court (and with any interpreters if required). Where the respondent does not have access to a computer, the hearing will take place by telephone conference.

9. Tipstaff

9.1 Tipstaff orders will still be available in the usual way and the Tipstaff will continue to discharge his responsibilities, subject always to any operational constraints imposed by the current public health emergency and any current or future Government guidance. The Tipstaff office can be contacted by telephone on **020 7947 6200**.

9.2 It should be noted that the Tipstaff requires a sealed order for the discharge of existing port alerts and passport orders. Unsealed orders will not suffice. In the circumstances, Tipstaff orders will need to be sent directly from the Judge/Clerk/Associate to the Tipstaff once sealed.

Sir Andrew McFarlane

President of the Family Division

26 March 2020

APPENDIX 1



**In the High Court of Justice
Family Division
Sitting Remotely**

No: FD _____

**[THE CHILD ABDUCTION AND CUSTODY ACT 1985]
[COUNCIL REGULATION (EC) No. 2201/2003]
[THE SENIOR COURTS ACT 1981]**

IMPORTANT NOTE. The next hearing will take place remotely (that is to say the Judge, the parties and, where relevant, their representatives, will attend the hearing in different locations but by means of the communications technology specified in this order). Each party and/or their representatives must take immediate steps to obtain or ensure that they have access to appropriate technology in preparation for that hearing.

The Child(ren) _____

After considering the application issued on notice to the respondent.

ORDER MADE BY _____ ON _____ SITTING IN PRIVATE

The Parties

1. The applicant is _____
The respondent is _____

Recitals

1. **UPON** the Applicant having issued an application for relief under the [Child Abduction and Custody Act 1985] / [Council Regulation (EC) No. 2201/2003] / [the Inherent Jurisdiction of the High Court].
2. **AND UPON** the Court reading the application dated _____ and the evidence in support thereof.
3. **AND UPON** the Court determining that in the exceptional circumstances of the current national public health emergency this case is suitable for hearing remotely ('remote hearing') by means of a remote communication platform to be identified.
4. **AND UPON** the parties having attended the hearing by means of [telephone/video link].

IT IS ORDERED THAT:

[Choose as appropriate]:

1. At the hearing listed below the applicant and the respondent shall each be given a further opportunity to contact the court based mediator to enable the court based mediator to discuss with the parties the possibility of the parties engaging in mediation under the Child Abduction Mediation Scheme and, where appropriate, undertake a screening interview.
2. Upon service of the Applicant's application on the Respondent, the Respondent shall immediately file with the court a notice confirming the respondent's address and the whereabouts of the child (or that they are unaware of the child's whereabouts) and, where the respondent subsequently changes his or her address or becomes aware of any change in the child's whereabouts, a notice of the new address or of the new whereabouts of the child.
3. Upon service of the Applicant's application the Respondent shall serve on the applicant the notice confirming the respondent's address and the whereabouts of the child (or that they are unaware of the child's whereabouts) *or* file with the court a notice indicating that the respondent objects to serving on the applicant with notice confirming the respondent's address and the whereabouts of the child and the reasons for that objection.

4. By 4pm on _____ the applicant shall file and serve any further evidence to be relied on by the applicant in support of the application including, where it is not already contained in the evidence supporting the application, a description of any protective measures (including orders that may be subject to registration under Art 11 of the 1996 Hague Convention or, where appropriate, undertakings) the applicant is prepared, without prejudice to his or her case, to offer for the purpose of securing the child's return.
5. By 4pm on _____ the respondent shall file and serve any answer to the applicant's application and any evidence in support of that answer, to include details of any protective measures the respondent seeks (including, where appropriate, undertakings) in the event that the court were to order the child(ren)'s return.
6. An officer of the Cafcass High Court team shall by 4pm on 20 September 2017 provide a report on the following issue(s):
 - (a) The child(ren)'s wishes and feelings;
 - (b) Whether the child(ren) should be separately represented in these proceedings.
7. The applicant shall notify Cafcass forthwith of the making of this order and shall thereafter provide a copy of the trial bundle and a copy of this order to the Cafcass High Court Team within 2 working days by email to highcourtgm@cafcass.gsi.gov.uk.
8. The respondent shall make the child _____ available to be seen by the Cafcass officer at a time and place to be arranged by the officer.
9. The Cafcass officer shall be available to attend the hearing remotely on _____ and shall attend if notified by a party in writing by letter or email to highcourtgm@cafcass.gsi.gov.uk at least 2 working days before the hearing that the officer's attendance is essential.
10. The Applicant's application shall be adjourned for a first directions hearing or summary resolution if appropriate before a High Court Judge of the Family Division on _____ with a time estimate of 1 hour. The hearing shall take place by way of remote hearing pursuant to FPR 2010 r 4.1(e).
11. By 4.00pm on _____ the parties shall agree and communicate to the judge's clerk their preferred method of remote communication.
12. Upon the court confirming that the method elected by the parties is acceptable, the Applicant's solicitor shall be responsible for arranging with the Judge's clerk the necessary facilities to conduct a remote hearing, allowing sufficient time for any necessary testing to take place. This will include provision to the court of the necessary contact details for the parties and their representatives where these are needed to facilitate the remote hearing.
13. The Applicant's solicitor must confirm the details of the arrangements for the hearing to the other parties by no later than 24 hours prior to the remote hearing taking place.
14. By 4.00pm on _____ the applicant's solicitor shall electronically file a PDF bundle prepared in accordance with the requirements of Paragraph 20 of the Protocol

For Remote Hearings in the Family Court and Family Division of the High Court, which e-bundle must include:

- (a) A case summary and chronology;
 - (b) The parties positions statements;
 - (c) The previous orders that are relevant to the remote hearing;
 - (d) All essential documents that the court requires to determine the issues that fall for determination at the remote hearing;
 - (e) A draft order.
15. The Respondent shall attend remotely the hearing at on _____ together with any legal representatives he/she may instruct.
16. HMCTS shall endeavour to arrange for the attendance remotely at the hearing on _____ of an interpreter who speaks the language and dialect set out in section 11 of the Applicant's Form C67, namely _____.
17. A copy of this order and the electronic bundle shall be served by the Applicant on the Respondent no later than two clear days before the hearing on _____.
18. [Other directions]
19. Costs in the application.

Dated _____