



# President of the Family Division

## Guidance for the Judiciary

### **Transfer of proceedings under Articles 8 and/or 9 of 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 Convention')**

#### **Introduction**

1. This Guidance is an update of the document "*Guidance for the Judiciary: Transfer of proceedings under Article 15 of Brussels IIa and Articles 8 and/or 9 of the 1996 Hague Convention*" previously issued by the Office of the President of the Family Division in April 2016. This Guidance replaces the 2016 version and has been updated principally in light of changes to the legal framework following the United Kingdom's exit from the European Union. It summarises the process to be followed by courts and parties and provides details of the requirement for the registration of all transfers requested under the 1996 Convention. For proceedings to which Article 15 of Brussels IIa would still apply, in accordance with the Withdrawal Agreement, please refer to the 2016 Guidance.
2. This Guidance provides an administrative/procedural context and is not intended to provide guidance on legal issues arising from Articles 8 or 9 or more generally.

#### **Background**

3. Articles 8 and 9 of the 1996 Convention provide for the transfer of jurisdiction to take measures within the scope of the 1996 Convention to or from another Hague Convention State (see for Contracting States: <https://www.hcch.net/en/instruments/conventions/status-table/?cid=70>).
4. Note that the provisions for transfer do not apply to matrimonial proceedings or to the establishment of the parent-child relationship, to decisions about or preparatory to adoption or to maintenance obligations: see Article 4 of the 1996 Convention.

#### **Procedure**

5. The procedure on an application for transfer of proceedings under Articles 8 or 9 of the 1996 Convention is governed by the Family Procedure Rules 2010, rr 12.61-12.67.
6. There is a specific form available for an application for transfer (Form C68: Application for international transfer of jurisdiction to or from England and Wales), which is intended for use by a person who is or would be a party to the proceedings. However, in practice, such applications appear often to be made informally. An application or request from the court of another State will frequently be made through the respective Central Authorities, but might also be made directly to the court.
7. An application/request for transfer of jurisdiction from England and Wales under Articles 8/9 of the 1996 Convention is known as an 'outgoing request'. An application/request for transfer of jurisdiction to England and Wales is known as an 'incoming request'.
8. This Guidance is also subject to any relevant Allocation Guidance.



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## Procedure: Outgoing requests

9. An application by a **party** to transfer proceedings from a court in England and Wales to the court of another Contracting State must be made to the court in which the proceedings are continuing, and it is that court which may exercise powers under Article 8 (r.12.62).
10. Where the court is considering exercising its powers under Article 8 on its own initiative, the court must fix a hearing and give the parties at least 5 days' notice (r.12.64).
11. Where a request is received under Article 9 from **another Contracting State** by a court in which proceedings are continuing in England and Wales, the court must notify the Central Authority (ICACU in England and the Welsh Government in Wales, depending on the Local Authority area in which the child/children are present); fix a hearing; and serve the application and notice of the hearing on the parties not less than 5 days before the hearing (r.12.63). Whilst ICACU and the Welsh Government must be notified, there is no expectation that they will either attend any hearing or make representations in respect of the application.
12. In any of these cases the court may give directions for the filing of evidence or representations. Consideration will also need to be given, in particular in respect of a request under Article 9, as to allocation on consultation with the relevant Designated Family Judge or Family Presiding Judge.
13. When the court is considering whether to make an outgoing request under Article 8, in the absence of a party having already made the appropriate enquiries, early consideration should be given to directing a nominated party to obtain information through ICACU/Welsh Government of: (i) the process by which such a request would need to be made; and (ii) how arrangements might be made for the child/children to move to/be cared for in the other Contracting State if the request is accepted.
14. When the court has made a request under Article 8, the request should be sent by a nominated party to ICACU/Welsh Government for onward transmission to the other Contracting State unless the court has been notified that it should be sent otherwise.
15. In circumstances where there are no proceedings ongoing in England and Wales, requests should be directed to the Royal Courts of Justice ([rcj.familyhighcourt@justice.gov.uk](mailto:rcj.familyhighcourt@justice.gov.uk)) and copied to the International Family Justice Office ([ifjoffice@justice.gov.uk](mailto:ifjoffice@justice.gov.uk)).

## Procedure: Incoming requests

16. An application for the **court** in England and Wales to request transfer of jurisdiction from another Contracting State to a court in England and Wales under Article 9 must be made to the High Court (PRFD) (r.12.65).
17. Any request by the court of **another Contracting State** for a court in England and Wales to assume jurisdiction must be determined by the High Court. Where a request is received by a court other than the High Court, it must be referred to a Judge of the High Court for a decision on acceptance (r.12.66).
18. If, as a result of a request made by the High Court or by a court in another Contracting State, jurisdiction is transferred to a court in England and Wales, the proceedings may be allocated



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to the Family Court or High Court as appropriate, in the same manner as proceedings commenced in England and Wales.

19. In circumstances where there are no proceedings ongoing in England and Wales, requests should be directed to the Royal Courts of Justice ([rcj.familyhighcourt@justice.gov.uk](mailto:rcj.familyhighcourt@justice.gov.uk)) and copied to the International Family Justice Office ([ifjoffice@justice.gov.uk](mailto:ifjoffice@justice.gov.uk))

## **Register for incoming and outgoing requests made under Articles 8 and/or 9 of the 1996 Hague Convention**

20. There is a requirement that the details of all applications and requests for transfer of jurisdiction to or from another Contracting State must be entered in a register kept by the High Court (PRFD): see FPR 2010, r 12.61(5).
21. The guidance below sets out the information which is required for inclusion in the register. This guidance has also been provided to HMCTS staff.

### **Register: Outgoing requests**

22. An outgoing request will be considered by the relevant court in England and Wales. If granted, it is then for the other state to accept or refuse the transfer request.
23. Once the court in England and Wales has determined an application/request for a transfer of jurisdiction the information set out below must be sent by a member of HMCTS staff to the National Family Team, who will keep the register on behalf of the PRFD.
24. The register will be updated and maintained by the National Family Team in the Courts and Tribunals Service Centre. Courts are instructed to provide the National Family Team with the relevant information via email to update the register.
25. The National Family Team will require a copy of the order and the following information:
- Confirmation that it relates to Article 8 or Article 9 (please specify)
  - Case Number
  - Name of Applicant
  - Name of Respondent
  - Name of children
  - The other country/state involved
  - Date of order and whether the request was granted
  - Confirmation of whether the request was made by a party, of the court's own motion or from another state/country
  - Whether the transfer has been accepted by the other state
26. This information should be included in the order, but if any information is omitted it should be contained in the body of the email to the National Family Team. Court staff should send the email with the order attached to [civil\\_and\\_familybusinesssupport@justice.gov.uk](mailto:civil_and_familybusinesssupport@justice.gov.uk) with 'Central Register entry' in the subject box.



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27. The core information required for the register should be provided as soon as possible after the order is made. It is not necessary to wait until a response is received from the court in the other Contracting State.
28. The register must also record whether the transfer request has been accepted or refused. It is recommended that once an order has been made a diary entry be noted 6 weeks ahead to check the position. The court order should direct the applicant, or, in public law children proceedings, the Local Authority to inform the court of the decision made by the other Contracting State. Once this information is received by the court, it must be sent to the National Family Team by email as above.

### **Register: Incoming requests**

29. Applications to the court in England and Wales for transfer from another Contracting State which must be made to the High Court (PRFD) at the Royal Courts of Justice (see paragraph 16 above) will be entered directly onto the register maintained by the team at the PRFD.
30. If the request is accepted, the court officer will notify the parties to the proceedings and the case will be allocated as if the application had been made in England and Wales. Allocation will normally be to the relevant Family Court centre, unless a direction has been made for the case to proceed in the High Court.

### **Requests for information**

31. If the court receives a request for information as to whether a case has been transferred out under Article 8 the enquirer will be advised by court staff to email [civil\\_and\\_familybusinesssupport@justice.gov.uk](mailto:civil_and_familybusinesssupport@justice.gov.uk) who will be able to deal with their request.
32. For information on whether a transfer in was accepted, a request can be emailed to the team at the PRFD: [rcj.familyhighcourt@justice.gov.uk](mailto:rcj.familyhighcourt@justice.gov.uk).

***The Rt Hon Sir Andrew McFarlane, President of the Family Division  
January 2025***