

INTERNATIONAL CHILD ABDUCTION

This Practice Direction supplements FPR Part 12, Chapters 5 and 6

PART 1

INTRODUCTION

- 1.1** This Practice Direction explains what to do if a child has been brought to, or kept in, England and Wales without the permission of anyone who has rights of custody in respect of the child in the country where the child was habitually resident immediately before the removal or retention. It also explains what to do if a child has been taken out of, or kept out of, England and Wales¹ without the permission of a parent or someone who has rights of custody in respect of the child. These cases are called ‘international child abduction cases’ and are dealt with in the High Court. This Practice Direction also explains what to do if you receive legal papers claiming that you have abducted a child. You can find the legal cases which are mentioned in this Practice Direction, and other legal material, on the website <http://www.bailii.org/> (British and Irish Legal Information Institute).
- 1.2** If you have rights of custody in respect of a child and the child has been brought to England or Wales without your permission, or has been brought here with your permission but the person your child is staying with is refusing to return the child, then you can apply to the High Court of Justice, which covers all of England and Wales, for an order for the return of the child.
- 1.3** How you make an application to the High Court, what evidence you need to provide and what orders you should ask the court to make are all explained in this Practice Direction.
- 1.4** If your child is under 16 years of age and has been brought to England or Wales from a country which is a party (a ‘State party’) to the 1980 Hague Convention on the Civil Aspects of International Child Abduction (‘the 1980 Hague Convention’) then you can make an application to the High Court for an order under that Convention for the return of your child to the State in which he or she was habitually resident immediately before being removed or being kept away. This is explained in Part 2 below.

¹ The child must be taken or kept out of the United Kingdom without the permission of a parent or someone who has rights of custody for it to be an international child abduction. This practice direction relates to the law as it applies in England and Wales. If the child has been taken or kept out of the United Kingdom when the child was habitually resident in Scotland, you should contact the Central Authority for Scotland, Scottish Government Justice Directorate, Civil Law Division, St Andrew’s House, Regent Road, Edinburgh EH1 3DG Tel: +44 (0) 131 244 4827/4832 Fax:: +44 (0) 131 244 4848 Website: <http://www.scotland.gov.uk/Topics/Justice/law/17867/fm-children-root/18533>.

If the child has been taken or kept out of the United Kingdom when the child was habitually resident in Northern Ireland, you should contact the Central Authority for Northern Ireland, Northern Ireland Courts and Tribunals Service, Civil Policy and Tribunal Reform Division, 3rd Floor Laganside House, 23-27 Oxford Street, Belfast BT1 3LA Tel: +44 (0) 2890 328 594; fax + 44 (0)2890 728 944. Website: <http://www.nics.gov.uk/> or <http://www.courtsni.gov.uk/en-GB/Services/ChildAbduction/>

- 1.5** If your child is over 16 years of age and under 18, or has been brought to England or Wales from a country which is not a State party to the 1980 Hague Convention, then you can make an application for the return of your child under the inherent jurisdiction of the High Court with respect to children. In exercising this jurisdiction over children, the High Court will make your child's welfare its paramount consideration. How to make an application under the inherent jurisdiction of the High Court with respect to children is explained in Part 3 below.
- 1.6** It might be necessary for you to make an urgent application to the court if you are not sure where your child is, or you think that there is a risk that the person who is keeping your child away from you might take the child out of the United Kingdom or hide them away. Part 4 below explains how to make an urgent application to the High Court for orders to protect your child until a final decision can be made about returning the child and also how to ask for help from the police and government agencies if you think your child might be taken out of the country.

Rights of Access

- 1.7** Rights of access to children (also called contact or visitation) may be enforced in England and Wales. Access orders made in other Member States of the European Union can be enforced under EU law, and the 1980 Hague Convention expects State parties to comply with orders and agreements concerning access as well as rights of custody. If you have an access order and you want to enforce it in England or Wales, you should read Part 5 below.

PART 2

Hague Convention Cases

- 2.1** States which are party to the 1980 Hague Convention have agreed to return children who have been either wrongfully removed from, or wrongfully retained away from, the State where they were habitually resident immediately before the wrongful removal or retention. There are very limited exceptions to this obligation.
- 2.2** 'Wrongfully removed' or 'wrongfully retained' means removed or retained in breach of rights of custody in respect of the child attributed to a person or a body or an institution. 'Rights of custody' are interpreted very widely (see paragraph 2.16 below).
- 2.3** The text of the 1980 Hague Convention and a list of Contracting States (that is, State parties) can be found on the website of the Hague Conference on Private International Law at <http://www.hcch.net>. All Member States of the European Union are State parties to the 1980 Hague Convention, and all but Denmark are bound by an EU Regulation which supplements the operation of the 1980 Hague Convention between the Member States of the EU (Council Regulation (EC) No 2201/2003, see paragraph 2.6).
- 2.4** In each State party there is a body called the Central Authority whose duty is to help people use the 1980 Hague Convention.
- 2.5** If you think that your child has been brought to, or kept in, England or Wales, and your State is a State party to the 1980 Hague Convention, then you should get in touch with your own Central Authority who will help you to send an application for the return of your child to the Central Authority for England and Wales. However, you are not obliged to contact your own Central Authority. You may contact the Central Authority for England and Wales directly, or you may simply instruct lawyers in England or Wales to make an application for you. The

advantage of making your application through the Central Authority for England and Wales if you are applying from outside the United Kingdom is that you will get public funding ('legal aid') to make your application, regardless of your financial resources.

The Central Authority for England and Wales

2.6 The Child Abduction and Custody Act 1985 brings the 1980 Hague Convention into the law of England and Wales and identifies the Lord Chancellor as the Central Authority. His duties as the Central Authority are carried out by the International Child Abduction and Contact Unit (ICACU). ICACU also carries out the duties of the Central Authority for two other international instruments. These are the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children signed at Luxembourg on 20 May 1980 (called 'the European Convention' in this Practice Direction but sometimes also referred to as 'the Luxembourg Convention') and the European Union Council Regulation (EC) No 2201/2003 of 27 November 2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility ('the Council Regulation'¹). The Council Regulation has direct effect in the law of England and Wales.

2.7 ICACU is open Mondays to Fridays from 9.00 a.m. to 5.00 p.m. It is located in the Office of the Official Solicitor and Public Trustee and its contact details are as follows:

International Child Abduction and Contact Unit

81 Chancery Lane

London

WC2A 1DD

DX 0012 London Chancery Lane

Tel: + 44 (0)20 7911 7045 / 7047

Fax: + 44 (0)20 7911 7248

Email: enquiries@offsol.gsi.gov.uk

In an emergency (including out of normal working hours) contact should be made with the Royal Courts of Justice on one of the following telephone numbers:

+ 44 (0)20 7947 6000, or

+ 44 (0) 20 7947 6260

In addition, in an emergency or outside normal working hours advice on international child abduction can be sought from **reunite International Child Abduction Centre** on + 44 (0)1162 556 234. Outside office hours you will be directed to the 24hour emergency service. You can also see information on **reunite's** website <http://www.reunite.org/>.

What ICACU Will Do

2.8 When ICACU receives your application for the return of your child, unless you already have a legal representative in England and Wales whom you want to act for you, it will send your application to a solicitor whom it knows to be experienced in international child abduction cases and ask them to take the case for you. You will then be the solicitor's client and the solicitor will make an application for public funding to meet your legal costs. The solicitor will then apply to the High Court for an order for the return of your child.

¹ The 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 is also known as Brussels IIa, or Brussels II Revised, or Brussels II bis.

- 2.9** You can find out more about ICACU and about the 1980 Hague Convention and the other international instruments mentioned at paragraph 2.6 on two websites: Information for parties and practitioners is available on <http://www.justice.gov.uk> and general information for members of the public is available on www.direct.gov.uk.

Applying to the High Court – the Form and Content of Application

- 2.10** An application to the High Court for an order under the 1980 Hague Convention must be made in the Principal Registry of the Family Division in Form C67. If the Council Regulation applies, then the application must be headed both ‘in the matter of the Child Abduction and Custody Act 1985’ and ‘in the matter of Council Regulation (EC) 2201/2003’. This is to ensure that the application is handled quickly (see paragraph. 2.14 below) and to draw the court’s attention to its obligations under the Council Regulation.
- 2.11** The application must include –
- (a) the names and dates of birth of the children;
 - (b) the names of the children’s parents or guardians;
 - (c) the whereabouts or suspected whereabouts of the children;
 - (d) the interest of the applicant in the matter (e.g. mother, father, or person with whom the child lives and details of any order placing the child with that person);
 - (e) the reasons for the application;
 - (f) details of any proceedings (including proceedings not in England or Wales, and including any legal proceedings which have finished) relating to the children;
 - (g) where the application is for the return of a child, the identity of the person alleged to have removed or retained the child and, if different, the identity of the person with whom the child is thought to be;
 - (h) in an application to which the Council Regulation also applies, any details of measures of which you are aware that have been taken by courts or authorities to ensure the protection of the child after its return to the Member State of habitual residence.
- 2.12** The application should be accompanied by all relevant documents including (but not limited to) –
- (a) an authenticated copy of any relevant decision or agreement;
 - (b) a certificate or an affidavit from a Central Authority, or other competent authority of the State of the child’s habitual residence, or from a qualified person, concerning the relevant law of that State.
- 2.13** As the applicant you may also file a statement in support of the application, although usually your solicitor will make and file a statement for you on your instructions. The statement must contain and be verified by a statement of truth in the following terms:
- ‘I make this statement knowing that it will be placed before the court, and I confirm that to the best of my knowledge and belief its contents are true.’*
- (Further provisions about statements of truth are contained in Part 17 of these Rules and in Practice Direction 17A.).

The Timetable for the Case

- 2.14** Proceedings to which the Council Regulation applies must be completed in 6 weeks ‘except where exceptional circumstances make this impossible’. The following procedural steps are intended to ensure that applications under the 1980 Hague Convention and the Council Regulation are handled quickly –
- (a) the application must be headed both ‘in the matter of the Child Abduction and Custody Act 1985’ and ‘in the matter of Council Regulation (EC) 2201/2003’;
 - (b) the court file will be marked to –
 - (i) draw attention to the nature of the application; and
 - (ii) state the date on which the 6 week period will expire (the ‘hear-by date’);
 - (c) listing priority will, where necessary, be given to such applications;
 - (d) the trial judge will expedite the transcript of the judgment and its approval and ensure that it is sent to the Central Authority without delay.

[The above is taken from the judgment of the Court of Appeal, Civil Division in Vigreux v Michel & anor [2006] EWCA Civ 630, [2006] 2 FLR 1180.]

Applications for Declarations

- 2.15** If a child has been taken from England and Wales to another State party, the judicial or administrative authorities of that State may ask for a declaration that the removal or retention of the child was wrongful. Or it might be thought that a declaration from the High Court that a child has been wrongfully removed or retained away from the United Kingdom would be helpful in securing his return. The High Court can make such declarations under section 8 of the Child Abduction and Custody Act 1985. An application for a declaration is made in the same way as an application for a return order, the only difference being that the details of relevant legal proceedings in respect of which the declaration is sought (if any), including a copy of any order made relating to the application, should be included in the documentation.

Rights of Custody

- 2.16** ‘Rights of custody’ includes rights relating to the care of the person of the child and, in particular, the right to determine the child’s place of residence. Rights of custody may arise by operation of law (that is, they are conferred on someone automatically by the legal system in which they are living) or by a judicial or administrative decision or as a result of an agreement having legal effect. The rights of a person, an institution or any other body are a matter for the law of the State of the child’s habitual residence, but it is for the State which is being asked to return the child to decide: if those rights amount to rights of custody for the purposes of the 1980 Hague Convention; whether at the time of the removal or retention those rights were actually being exercised; and whether there has been a breach of those rights.
- 2.17** In England and Wales a father who is not married to the mother of their child does not necessarily have ‘rights of custody’ in respect of the child. An unmarried father in England and Wales who has parental responsibility for a child has rights of custody in respect of that child. In the case of an unmarried father without parental responsibility, the concept of rights of custody may include more than strictly legal rights and where immediately before the removal or retention of the child he was exercising parental functions over a substantial period of time as the only or main carer for the child he may have rights of custody. An unmarried father can

ask ICACU or his legal representative for advice on this. It is important to remember that it will be for the State which is being asked to return the child to decide if the father's circumstances meet that State's requirements for the establishment of rights of custody.

- 2.18** Sometimes, court orders impose restrictions on the removal of children from the country in which they are living. These can be orders under the Children Act 1989 ('section 8' orders) or orders under the inherent jurisdiction of the High Court (sometimes called 'injunctions'). Any removal of a child in breach of an order imposing such a restriction would be wrongful under the 1980 Hague Convention.
- 2.19** The fact that court proceedings are in progress about a child does not of itself give rise to a prohibition on the removal of the child by a mother with sole parental responsibility from the country in which the proceedings are taking place unless:
- (a) the proceedings are Wardship proceedings in England and Wales (in which case removal would breach the rights of custody attributed to the High Court and fathers with no custody rights could rely on that breach); or
 - (b) the court is actually considering the custody of the child, because then the court itself would have rights of custody.

Particular provisions for European Convention applications

- 2.20** The European Convention provides for the mutual recognition and enforcement of decisions relating to custody and access, so if a child has been brought here or retained here in breach of a custody order, then that order can be enforced. The European Convention has now been superseded to a very great extent by the Council Regulation. If however you want to make an application under the European Convention, then you make it in the same way as is described in paragraphs 2.10 and 2.11 above, but in addition you must include a copy of the decision relating to custody (or rights of access – see paragraph 5.1 below) which you are seeking to register or enforce, or about which you are seeking a declaration by the court.

Defending Abduction Proceedings

- 2.21** If you are served with an application – whether it is under the 1980 Hague or the European Convention or the inherent jurisdiction of the High Court – you must not delay. You must obey any directions given in any order with which you have been served, and you should seek legal advice at the earliest possible opportunity, although neither you nor the child concerned will automatically be entitled to legal aid.
- 2.22** It is particularly important that you tell the court where the child is, because the child will not be permitted to live anywhere else without the permission of the court, or to leave England and Wales, until the proceedings are finished.
- 2.23** It is also particularly important that you present to the court any defence to the application which you or the child might want to make at the earliest possible opportunity, although the orders with which you will have been served are likely to tell you the time by which you will have to do this.
- 2.24** If the child concerned objects to any order sought in relation to them, and if the child is of an age and understanding at which the court will take account of their views, the court is likely to direct that the child is seen by an officer of the Children and Family Court Advisory and Support Service (Cafcass) or in Wales CAFCASS CYMRU. You should cooperate in this

process. Children are not usually made parties to abduction cases, but in certain exceptional circumstances the court can make them parties so that they have their own separate legal representation. These are all matters about which you should seek legal advice.

(Provisions about the power of the court to join parties are contained in rule 12.3 and provisions about the joining and representation of children are contained in Part 16 of these Rules and the Practice Direction 16A (Representation of Children).)

PART 3

Non-Convention Cases

- 3.1** Applications for the return of children wrongfully removed or retained away from States which are not parties to the 1980 Hague Convention or in respect of children to whom that Convention does not apply, can be made to the High Court under its inherent jurisdiction with respect to children. Such proceedings are referred to as ‘non-Convention’ cases. In proceedings under the inherent jurisdiction of the High Court with respect to children, the child’s welfare is the court’s paramount consideration. The extent of the court’s enquiry into the child’s welfare will depend on the circumstances of the case; in some cases the child’s welfare will be best served by a summary hearing and, if necessary, a prompt return to the State from which the child has been removed or retained. In other cases a more detailed enquiry may be necessary (see *Re J (Child Returned Abroad: Convention Rights)* [2005] UKHL 40; [2005] 2 FLR 802).
- 3.2** Every application for the return of a child under the inherent jurisdiction must be made in the Principal Registry of the Family Division and heard in the High Court.

Provision about the inherent jurisdiction is made at Chapter 5 of Part 12 of the Rules and in Practice Direction 12D (Inherent Jurisdiction (including Wardship) Proceedings).

The Form and content of the application

- 3.3** An application for the return of a child under the inherent jurisdiction must be made in Form C66 and must include the information in paragraph 2.11 above.
- 3.4** You must file a statement in support of your application, which must exhibit all the relevant documents. The statement must contain and be verified by a statement of truth in the following terms:
‘I make this statement knowing that it will be placed before the court, and I confirm that to the best of my knowledge and belief its contents are true.’

(Further provisions about statements of truth are contained in Part 17 of these Rules and Practice Direction 17A.).

Timetable for Non-Convention Cases

- 3.5** While the 6 week deadline referred to in paragraph 2.14 is set out in the 1980 Hague Convention and in the Council Regulation, non-Convention child abduction cases must similarly be completed in 6 weeks except where exceptional circumstances make this impossible. Paragraph 2.14 applies to these cases as appropriate for a non-Convention case.

PART 4

General Provisions

Urgent applications, or applications out of business hours

- 4.1** Guidance about urgent and out of hours applications is in Practice Direction 12E (Urgent Business).

Police assistance to prevent removal from England and Wales

- 4.2** The Child Abduction Act 1984 sets out the circumstances in which the removal of a child from this jurisdiction is a criminal offence. The police provide the following 24 hour service to prevent the unlawful removal of a child –
- (a)** they inform ports directly when there is a real and imminent threat that a child is about to be removed unlawfully from the country; and
 - (b)** they liaise with Immigration Officers at the ports in an attempt to identify children at risk of removal.
- 4.3** Where the child is under 16, it is not necessary to obtain a court order before seeking police assistance. The police do not need an order to act to protect the child. If an order has already been obtained it should however be produced to the police. Where the child is between 16 and 18, an order must be obtained restricting or restraining removal before seeking police assistance.
- 4.4** Where the child is a ward of court (see Practice Direction 12D (Inherent Jurisdiction (including Wardship) Proceedings) the court's permission is needed to remove that child from the jurisdiction. When the court has not given that permission and police assistance is sought to prevent the removal of the ward, the applicant must produce evidence that the child is a ward such as –
- (a)** an order confirming wardship;
 - (b)** an injunction; or
 - (c)** where the matter is urgent and no order has been made, a certified copy of the wardship application.
- 4.5** The application for police assistance must be made by the applicant or his legal representative to the applicant's local police station except that applications may be made to any police station –
- (a)** in urgent cases;
 - (b)** where the wardship application has just been issued; or
 - (c)** where the court has just made the order relied on.
- 4.6** The police will, if they consider it appropriate, institute the 'port alert' system (otherwise known as 'an all ports warning') to try to prevent removal from the jurisdiction where the danger of removal is –
- (a)** real (i.e., not being sought merely by way of insurance); and

- (b) imminent (i.e. within 24 to 48 hours).
- 4.7** The request for police assistance must be accompanied by as much of the following information as possible –
- (a) *the child*: the name, sex, date of birth, physical description, nationality and passport number; if the child has more than one nationality or passport, provide details;
 - (b) *the person likely to remove*: the name, age, physical description, nationality, passport number, relationship to the child, and whether the child is likely to assist him or her; if the person has more than one nationality or passport, provide details;
 - (c) *person applying for a port alert*: the name, relationship to the child, nationality, telephone number and (if appropriate) solicitor's or other legal representative's name and contact details; if the person has more than one nationality, provide details;
 - (d) likely destination;
 - (e) likely time of travel and port of embarkation and, if known, details of travel arrangements;
 - (f) grounds for port alert (as appropriate) –
 - (i) suspected offence under section 1 or section 2 of the Child Abduction Act 1984;
 - (ii) the child is subject to a court order.
 - (g) details of person to whom the child should be returned if intercepted.
- 4.8** If the police decide that the case is one in which the port-alert system should be used, the child's name will remain on the stop list for **four weeks**. After that time it will be removed automatically unless a further application is made.

The Identity and Passport Service

- 4.9** Where the court makes an order prohibiting or otherwise restricting the removal of a child from the United Kingdom, or from any specified part of it, or from a specified dependent territory, the court may make an order under section 37 of the Family Law Act 1986 requiring any person to surrender any UK passport which has been issued to, or contains particulars of, the child.
- 4.10** The Identity and Passport Service ('IPS') will take action to prevent a United Kingdom passport or replacement passport being issued only where the IPS has been served with a court order expressly requiring a United Kingdom passport to be surrendered, or expressly prohibiting the issue of any further United Kingdom passport facilities to the child without the consent of the court, or the holder of such an order. Accordingly, in every case in which such an order has been made, the IPS must be served the same day if possible, or at the latest the following day, with a copy of the order. It is the responsibility of the applicant to do this. The specimen form of letter set out below should be used and a copy of the court order must be attached to the letter. Delay in sending the letter to the IPS must be kept to an absolute minimum.

“The Caveat Officer
Fraud and Intelligence Unit
Identity and Passport Service
Globe House
89 Eccleston Square
London SW1V 1PN

Dear Sir/Madam

_____ v _____

Case no: _____

This is to inform you that the court has today made an order

*prohibiting the issue of a passport/passports to [name(s)] [date of birth (if known)] of [address] without the consent of the holder of the order.

*requiring [name(s)] [date of birth (if known)] of [address] to surrender the passport(s) issued to him/her/them/the following child[ren] / or which contain(s) particulars of the following child[ren]:

Name	Date of Birth
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*and has granted an injunction/*made an order restraining the removal of the child[ren] from the jurisdiction.

(*Delete as appropriate)

Please add these names to your records to prevent the issue of further passport facilities for the child[ren]. I enclose a copy of the court order.

Yours faithfully

Applicant’s name / Applicant’s Solicitor’s name”

- 4.11** Following service on the IPS of an order either expressly requiring a United Kingdom passport to be surrendered by, or expressly prohibiting the issue of any further United Kingdom passport facilities to the child, the IPS will maintain a prohibition on issuing a passport, or further passport facilities until the child’s 16th birthday. The order should state that a passport must not be granted/applied for without the consent of the court or the holder of the order.

Note: These requests may also be sent to any of the regional Passport Offices.

- 4.12** Further information on communicating with the IPS where the court has made a request of, or an order against, the IPS, may be found in the Protocol: Communicating with the Identity and Passport Service in Family Proceedings of August 2003.
- 4.13** Information about other circumstances, in which the IPS will agree not to issue a passport to a child if the IPS receives an application, or an order in more general terms than set out at 4.11 above, from a person who claims to have parental responsibility for the child, is available from the IPS or at www.direct.gov.uk.

The Home Office

- 4.14** Information about communicating with the Home Office, where a question of the immigration status of a party arises in family proceedings, may be found in the Protocol: Communicating with the Home Office in Family Proceedings (revised and re-issued October 2010).

Press Reporting

- 4.15** When a child has been abducted and a judge considers that publicity may help in tracing the child, the judge may adjourn the case for a short period to enable representatives of the Press to attend to give the case the widest possible publicity.
- 4.16** If a Child Rescue Alert has been used concerning a child, within the UK or abroad, it will give rise to media publicity. The court should be informed that this has happened. If there are already court proceedings concerning a child, it is advisable to obtain the agreement of the court before there is publicity to trace a missing child. If the court has not given its permission for a child who is the subject of children proceedings to be identified as the subject of proceedings, to do so would be contempt of court.

Other Assistance

- 4.17** The Missing Persons Bureau will be participating for the UK in the European Union wide 116 000 hotline for missing children. Parents and children can ring this number for assistance. (It is primarily intended to deal with criminal matters, for example stranger kidnapping.)
- 4.18** It may also be possible to trace a child by obtaining a court order under the inherent jurisdiction or the wardship jurisdiction of the High Court addressed to certain government departments, as set out in Practice Direction 6C.

PART 5

Applications about rights of access

- 5.1** Access orders made in another Member State of the European Union (except Denmark) can be enforced in England or Wales under the Council Regulation.
- 5.2** Chapter III of the Council Regulation sets out provision for recognition and enforcement of parental responsibility orders, which include orders for custody and access (residence and contact) between Member States. Under Article 41 of the Council Regulation you can enforce an access order in your favour from another Member State directly, provided you produce the certificate given under Article 41(2) by the court which made the order. This is a quick procedure. The unsuccessful party is not allowed to oppose recognition of the order.
- 5.3** The rules on recognition and enforcement of parental responsibility orders are in Part 31. You should apply to the High Court using Form C69. Rule 31.8 covers applications for Article 41 of the Council Regulation. You can make the application without notice.
- 5.4** If the Council Regulation does not apply, and the access order was made by a State party to the European Convention, an application can be made to enforce the order under Article 11 of the European Convention. Paragraph 2.20 above gives further information about how to make the application.
- 5.5** Article 21 of the 1980 Hague Convention requires the States parties to respect rights of access. However, in the case of *Re G (A Minor) (Hague Convention: Access)* [1993] 1 FLR 669, the Court of Appeal took the view that Article 21 conferred no jurisdiction to determine matters relating to access, or to recognise or enforce foreign access orders (see Practice Note of 5 March 1993: Child Abduction Unit: Lord Chancellor's Department set out in the Annex to this Practice Direction). (The Child Abduction Unit is now called ICACU see paragraph 2.6.) An

access order which does not fall within the Council Regulation or the (very limited) application of the European Convention may only be enforced by applying for a 'contact order' under section 8 of the Children Act 1989.

- 5.6** This means that if, during the course of proceedings under the 1980 Hague Convention for a return order, the applicant decides to ask for access (contact) instead of the return of the child, but no agreement can be reached, a separate application for a contact order will have to be made, or the court invited to make a contact order without an application being made (Children Act 1989, s10(1)(b)).

PART 6

Child abduction cases between the United Kingdom and Pakistan

- 6.1** A consensus was reached in January 2003 between the President of the Family Division and the Hon. Chief Justice of Pakistan as to the principles to be applied in resolving child abduction cases between the UK and Pakistan.

The Protocol setting out that consensus can be accessed at: <http://www.fco.gov.uk/resources/en/pdf/2855621/3069133>

Annex

See paragraph 5.5

Practice Note

5 March 1993

Citations: [1993] 1 FLR 804

Child Abduction Unit: Lord Chancellor's Department

Duties of the Central Authority for England and Wales under Article 21 of the Hague Convention on the Civil Aspects of International Child Abduction

Child Abduction and Custody Act 1985

In the case of *Re G (A Minor) (Hague Convention: Access)* [1993] 1 FLR 669 the Court of Appeal considered the duties of the Central Authority for England and Wales on receiving an application in respect of rights of access under Art 21 of the Hague Convention.

The Court of Appeal took the view that Art 21 conferred no jurisdiction to determine matters relating to access, or to recognise or enforce foreign access orders. It provides, however, for executive co-operation in the enforcement of such recognition as national law allows.

Accordingly, the duty of the Central Authority is to make appropriate arrangements for the applicant by providing solicitors to act on his behalf in applying for legal aid and instituting proceedings in the High Court under s 8 of the Children Act 1989.

If, during the course of proceedings under Art 21 of the Convention, the applicant decides to seek access instead of the return of the child, but no agreement can be reached and the provisions of the European Convention on the Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children are not available, a separate application under s 8 of the Children Act 1989 will have to be made.

Central Authority for England and Wales

NOTE: The Child Abduction Unit is now called ICACU, see paragraph 2.6.

