

HAGUE - MAIN PROVISIONS INVOLVING CHANGE FOR DELIVERY PARTNERS: IMPLEMENTATION PROPOSALS

Article Number	What this means in practice	How we propose to implement and responsibilities
Article 9	<p>Provides for the possibility for jurisdiction to be transferred where authorities of one contracting country believe they are better placed to exercise jurisdiction over a child already in their territory.</p> <p>As framed would allow LAs to request transfer of jurisdiction directly from authorities abroad. However, in respect of cases where the authority is planning to apply for a care or supervision order through the courts, it would be appropriate for the courts to make the request for jurisdiction to be transferred.</p>	<p>Regulatory provision required.</p> <p>This to make it explicit that, where an LA wishes to initiate care proceedings in relation to a child and needs jurisdiction to be transferred, it should do so through the courts. See proposed Regulation 4 at Annex B.</p>
Articles 11 and 12	<p>Allows authorities to take emergency measures and provisional action in relation to a child present in the country but not “habitually resident” and so not covered by that country’s jurisdiction.</p> <p>Our courts already make orders under the Children Act 1989 (contact orders, prohibition orders etc) and these can</p>	<p>Regulatory provision required.</p> <p>To ensure purposes of Articles 11 and 12 can be met and temporary protective measures put in place, we propose that the implementing regulations (see Regulation 5) should provide that an LA can apply for an interim care or supervision order if the threshold for such orders is met in the circumstances envisaged by these two articles (also Article 20 of Brussels IIa); also that such orders will lapse when the authorities in the country in which the child is habitually resident take the appropriate actions.</p>

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Articles 11 and 12 (cont)	<p>be made to have effect for a specified period, including until the authorities with full jurisdiction have taken any necessary measures.</p> <p>However, in some child protection cases local authorities may want to apply for emergency protection orders or a care order. Under domestic law EPOs cannot last for more than 15 days which may not be long enough for the authorities in the other country to take action. Also it is only possible to obtain an interim care or supervision order if applying for a full care order.</p>	
<p>Article 29</p> <p>A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention on such authorities...Federal States shall be free to appoint more than one Central Authority...</p>	<p>Contracting States must designate a Central Authority (CA) and those with federal arrangements can choose to have separate CAs for their different territories.</p>	<p>Regulatory provision required.</p> <p>Regulations will confirm that the Welsh CA will be vested in the Welsh Ministers, the English CA in the Lord Chancellor whilst Northern Ireland and Scotland will have their own CAs. See proposed Regulation 8 at Annex B. The day-to-day functions of the Welsh CA would be undertaken by the Welsh Assembly Government.</p> <p>Implementing regulations will give each CA the functions of a CA, which will help for data sharing purposes.</p>

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<p>Article 30 (1)</p> <p>Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention.</p>	<p>Provides that the general duties of the CA are promoting co-operation with other CAs and between the competent authorities in their States (i.e. in this country, local authorities, Cafcass Cymru, the courts).</p>	<p>No specific regulatory provision needed – Convention directly applicable.</p> <p>MOJ will have responsibility, consulting with WAG and delivery partners, for developing / agreeing the working arrangements for the CA and the guidance on working with other agencies.</p>
<p>Article 30 (2)</p> <p>They (Central Authorities) shall, in connection with the application of the Convention, take appropriate steps to provide information as to the laws of, and services available in, their States relating to the protection of children.</p>	<p>Means that CAs will have to provide or offer access to information about the law (on private and public family law, parental responsibility etc) and the range of related services (e.g. contact centres) available in their countries. This information could be in the form of leaflets or hyper-links to websites.</p>	<p>No specific regulatory provision required.</p> <p>Duty falls on CA but MOJ / WAG will assist in developing the necessary information, in collaboration with the CA. To allow for ease of up-dating, propose that there be a dedicated web-page of summary information with appropriate hyperlinks to WAG safeguarding and MOJ websites.</p>
<p>Article 31 (a)</p> <p>The Central Authority of a Contracting State, either directly or through public authorities or other bodies, shall take all appropriate steps to....</p> <p>Facilitate the communications and offer the assistance provided for under Articles 8 and 9.</p>	<p>That the CA has a duty to facilitate exchanges between authorities in different contracting states as provided for in the Convention where the issue of transfers of jurisdiction arise</p>	<p>No specific regulatory provision required.</p> <p>Duty falls on CA to lend assistance in these circumstances.</p>

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<p>Article 31 (b)</p> <p>The Central Authority of a Contracting State, either directly or through public authorities or other bodies, shall take all appropriate steps to....</p> <p>facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the Convention applies.</p>	<p>Means that where another contracting state is, for example, seeking to establish contact arrangements or to help a couple reach agreement between them about the child or their property, that the CA will lend assistance. It does not mean that the CA is necessarily required to provide particular services itself but to offer support in accessing the services which a country has available. In Wales, many of these services may be voluntary-sector led and may charge.</p>	<p>No specific regulatory provision needed.</p> <p>Duty falls on CA. WAG / MOJ to provide information on mediation and related services which are available nationally. The CA may use that information when it receives requests for information.</p> <p>Property disputes specifically would be for the courts to decide but no legislative provision is necessary.</p>
<p>Article 31 (c)</p> <p>(c) provide, on the request of a competent authority of another Contracting State, assistance in discovering the whereabouts of a child where it appears that the child may be present and in need of protection within the territory of the requested State.</p>	<p>Means that the CA in this country would be under an obligation to assist in determining where the child was located and that it should “take all appropriate steps” to do so. A practical means would need to be found to enable the CA to meet this obligation, either by making provision for information to be provided to the CA from relevant sources or by placing a duty on other bodies to provide the CA with the necessary information.</p>	<p>Specific regulatory provision required to enable the CA to meet its obligation and to ensure no legal bar to data sharing.</p> <p>Duty falls on CA but there will be a reciprocal duty on LAs to lend assistance. The implementing regulations will provide that where the CA is asked to provide information on the whereabouts of the child, it may request the LA in whose area the child is thought to be, to assist and the request must be complied with. See proposed Regulation 10 at Annex B.</p> <p>The LA will assist by checking relevant available sources of information to which the LA has ready access and by providing information on the child’s whereabouts (i.e. where they live) to the CA.</p>

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<p>Article 31 (c) (continued)</p>	<p>“In need of protection” here means not simply in need of “safeguarding” but protection of the child’s broader interests in terms of legitimate parental contact and other measures dealt with under the terms of the Convention.</p>	<p>Why this approach: Reflects approach already taken under Section 6 of the Child Abduction and Custody Act 1985 with which LAs and other relevant agencies will be familiar</p> <p>To ensure legal consistency we also propose to extend the duty on LAs to assist the CA with information under Article 55(a)(i) of the Brussels IIa regulation. See proposed Regulation 10 at Annex B.</p>
<p>Article 32 (a)</p> <p>On a request made with supporting reasons by the Central Authority or other competent authority of any contracting State with which the child has a substantial connection, the Central Authority of the contracting State in which the child is habitually resident and present may, directly or through public authorities or other bodies provide a report on the situation of the child.</p>	<p>A country with which the child has a substantial connection (e.g. where the child visits or stays regularly) can ask the child’s main country of residence to provide a report on the child’s situation. Legal advice is that such a report might not simply be factual but might require a professional judgment e.g. on the child’s welfare.</p> <p>Effective implementation would require information in the report to be compiled by a relevant professional body (LAs) and for that body to be under an obligation to provide it.</p>	<p>Specific regulatory provision required.</p> <p>Primary responsibility for agreeing to the report lies with the CA but, to enable it to fulfil its obligations, we propose that provision be framed as for Article 31(c) i.e. that where the CA is asked to provide a report, the CA may request an LA or Cafcass Cymru to provide the information and the request must be complied with. See proposed Regulation 11 at Annex B.</p> <p>As on other provisions, to avoid unnecessary burdens or inappropriate requests, detailed guidance will be developed with LAs, the CA and other agencies to ensure there is clarity on the circumstances in which reports need to be made, and on what matters; also to ensure that safeguarding issues and the need to protect the identity or location of certain individuals (e.g. those being sheltered from domestic violence etc) are taken properly into account.</p>

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Article 32 (a) (continued)	Where, exceptionally, it is more appropriate for another professional body to prepare the report (e.g. where the child was subject to care proceedings) the information in the report might need to be compiled by Cafcass Cymru.	
<p>Article 32 (b)</p> <p>On a request made with supporting reasons by the Central Authority or other competent authority of any Contracting State with which the child has a substantial connection, the Central Authority of the Contracting State in which the child is habitually resident and present may, directly or through public authorities or other bodies...</p> <p>(b) request the competent authority of its State to consider the need to take measures for the protection of the person or property of the child.</p>	<p>This means, in effect, that if a child has a substantial connection to Wales, Welsh authorities can ask another contracting state in which the child is habitually resident to consider the need to take measures for the protection of the child or its property.</p> <p>This does not mean that the other contracting state is required to take any particular measures but rather that they must consider whether such measures are needed.</p> <p>Similarly, another member state to which a child has strong links can request the same of Welsh authorities, where Wales is the child's habitual residence.</p>	<p>No specific regulatory provision required.</p> <p>If there are safeguarding issues then it is already for the LA to act under their statutory powers under the Children Act (specifically, Section 47).</p> <p>Guidance to LAs & Cafcass Cymru would need to cover this point.</p> <p>Property issues would be a matter for the Courts.</p>

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<p>Article 33 (1)</p> <p>If an authority having jurisdiction under Articles 5 to 10 contemplates the placement of a child in a foster family or institutional care ...</p> <p>and if such placement or provision of care is to take place in another contracting state, it shall first consult with the Central Authority or other competent authority of the latter state.</p> <p>To that effect it shall transmit a report on the child together with the reasons for the proposed placement or provision of care.</p>	<p>Means that if a LA decides to place a child abroad in a contracting state where no Court Order is required (e.g. because everyone with parental responsibility agrees) a report must be provided and consultation undertaken with the relevant authority in that state.</p> <p>If a LA wishes to place a child abroad who is currently provided voluntarily with accommodation it must also obtain the consent of the persons who have parental responsibility.</p> <p>For placements to and from EU Member States, the provisions of Brussels IIa have applied since 1 March 2005.</p>	<p>Specific regulatory provision required.</p> <p>Regulatory provision needed to ensure no doubts about ability to share information. See proposed Regulation 12 at Annex B.</p> <p>To ensure legal consistency in relation to our co-operation with EU Member States, implementing regulations will also extend this provision to Article 56 of Brussels IIa.</p> <p>Guidance (Court Rules) will be needed to ensure a consistent approach to the status of children placed in this country and the duties on LAs arising from this.</p>
<p>Article 33 (2)</p> <p>The decision on the placement or provision of care may be made in the requesting State only if the Central Authority or other competent authority of the requested State had consented to the placement or provision of care, taking into account the child's best interests.</p>	<p>Means that placement abroad can only take place when the other contracting state has actually agreed, not just after it has been consulted</p>	<p>No specific regulatory provision required.</p> <p>Issue to be covered in guidance to our authorities.</p>

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<p>Article 34 (1)</p> <p>Where a measure of protection is contemplated, the competent authorities under the Convention, if the situation of the child so requires, may request any authority of another contracting state which has information relevant to the protection of the child to communicate such information.</p>	<p>Authorities with jurisdiction may, if the child's situation requires it, request authorities in another contracting state for information relevant to child protection.</p> <p>It is entirely up to the requested authority whether it wants to respond to the request.</p>	<p>Regulatory provision required.</p> <p>Provision will be made that relevant authorities have the power to respond where they consider it appropriate to do so. This is to remove any uncertainty that the sharing of information is not possible because of data protection requirements. See proposed Regulation 13 at Annex B.</p> <p>Guidance will be developed with delivery partners on the types of circumstances when they might wish to respond.</p>
<p>Article 34 (2)</p> <p>A contracting state may declare that requests under paragraph 1 shall be communicated to its authorities only through its central authority.</p>	<p>Allows for contracting countries to require that requests under Article 34(1) be routed through the CA.</p>	<p>Regulatory provision not required.</p> <p>To protect our authorities from unnecessary burdens we propose making a declaration, as provided for under this Article, that incoming requests from other countries be routed through the CA.</p> <p>We will also explore whether it might be permissible and appropriate for out-going requests from this country to be routed through the CA. This will need to be considered in discussion with MOJ and key delivery agencies.</p>

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<p>Article 35 (1)</p> <p>The competent authorities of a Contracting State may request the authorities of another Contracting State to assist in the implementation of measures of protection taken under this Convention, especially in securing the effective exercise of rights of access as well as of the right to maintain direct contacts on a regular basis.</p>	<p>Legal advice is that this provision does not concern assistance in enforcing orders through the courts but rather providing access to the practical assistance and services such as contact centres which are available.</p>	<p>No specific regulatory provision required other than the power to charge for services.</p> <p>Implement by providing the CA with information about the facilities such as the contact centres which we have available.</p> <p>We are proposing that a facility to charge be linked to this Article to cover any future eventuality where relevant services were provided directly by public authorities and charges needed to be levied. See proposed Regulation 14 at Annex B.</p>
<p>Article 35 (2)</p> <p>The authorities of a Contracting State in which the child does not habitually reside may, on the request of a parent residing in that State who is seeking to obtain or to maintain access to the child, gather information or evidence and may make a finding on the suitability of that parent to exercise access and on the conditions under which access is to be exercised.</p> <p>An authority exercising jurisdiction under Articles 5 to 10 to determine an application</p>	<p>This means that a parent residing in Wales who is seeking to obtain or maintain access to a child which normally lives in another contracting state can, for example, ask our authorities to make a finding on their suitability to have access; and the competent authority of the other country exercising jurisdiction, has to consider that information as part of the evidence of the case.</p>	<p>Specific provision required.</p> <p>A report leading to a conclusion about a parent's suitability to have contact would need to be produced by a relevant professional. Cafcass Cymru has no locus to prepare such reports outside of proceedings relating to children living in this country so we propose that this function fall to LAs.</p> <p>Although requests would come to LAs to consider, they would have discretion as to whether to provide the report or not. They may choose not to do so. Where they do wish to do so, we propose that there be a facility to charge a reasonable fee – the Convention allows for this. See proposed Regulation 14 at Annex B.</p> <p>Appropriate reasons for providing or refusing a report will be covered in the guidance.</p>

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<p>Article 35 (2) (continued)</p> <p>concerning access to the child, shall admit and consider such information, evidence and finding before reaching its decision.</p>		
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