



Welsh Assembly Government

## Consultation Document

### Summary

#### **Fulfilled Lives, Supportive Communities:**

Implementation of Chapter V of 1996 Hague Convention on the Protection of Children

This consultation note seeks views on arrangements for implementing into our domestic law 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."

Date of issue: **26 March 2010**

Action required: Responses by **30 April 2010**

Number: FLSC 3

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**IMPLEMENTATION OF CHAPTER V OF 1996 HAGUE CONVENTION ON THE PROTECTION OF CHILDREN**

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## Overview

This consultation note seeks views on arrangements for implementing into our domestic law 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 Ministry of Justice has issued in parallel, a short, technical consultation on the associated Regulations which will be needed to give the Convention full legal effect.

The purpose of this consultation note, which is being sent to local authorities, the WLGA, ADSS and Cafcass Cymru, is to highlight the main implications for delivery partners and to seek their views.

## How to respond

Consultation responses should be completed using the questionnaire at the back of this document and returned to :

Patrick Harper, Children's Health and Social Services Directorate, Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ or e-mail [Patrick.Harper@wales.gsi.gov.uk](mailto:Patrick.Harper@wales.gsi.gov.uk)

## Further information and related documents

Annex A – The Convention  
Annex B – Draft Regulations  
Annex C – Technical Consultation  
Annex D – Table of Provisions

## Contact Details

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**Data Protection**

The Welsh Assembly Government is the data controller for all personal data relating to your consultation response.

The Welsh Assembly Government intends to publish a summary of the responses to this document and where practicable, the responses. Normally, the name and address (or part of the address) of its author are published along with the response, as this gives credibility to the consultation exercise. If you do not wish to be identified as the author of your response, please state this expressly in writing to us.

The Welsh Assembly Government will share consultation responses with officials across the Department to inform the preparation of all future consultations.

## **What are the Main Issues**

1. This consultation highlights the main implications for delivery partners and seeks their views on the proposed arrangements for implementing 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.

## **Where are We Now**

2. The 1996 Hague Convention on the protection of children applies between contracting States across the world. It establishes uniform rules on jurisdiction, the choice of law and the recognition and enforcement of judgements in relation to measures for the protection of and improving the outcomes for children. The Convention was signed by UK Ministers in April 2003.

3. Following an earlier consultation on the principle of adopting the Convention, the Ministry of Justice (MoJ), which is leading implementation on behalf of England and Wales, has indicated that Member States are proposing to ratify the Convention later this year. In discussion with Welsh Ministers and other UK ministries, MoJ has now issued a short, technical consultation on the regulations which will be needed to give the Convention full legal effect.

4. Under the Convention, Welsh Ministers will be designated as the Central Authority for Wales and be responsible for discharging functions under the Convention.

5. Copies of MOJ's draft regulations and technical consultation letter are appended at Annexes B and C.

## **Why are We Proposing Change**

6. Many of the Convention's provisions mirror those which already apply in this country under existing EU law and will mean no major change except that similar provisions will now apply in our contacts with contracting countries beyond the EU.

7. Informal arrangements have been operating for a number of years under which local authorities have responded to requests as part of their general safeguarding arrangements as well as applications made via the MoJ under Brussels II A (BIIA)

8. These proposals will establish uniform rules on jurisdiction, the choice of law and the recognition and enforcement of judgements in relation to measures for protecting and improving the outcomes for children. In so doing, they are consistent with the Welsh Assembly Government's position on the UN Convention on the Rights of the Child.

## **What Changes are Proposed**

9. The Convention covers a wide range of civil measures of protection concerning children. In particular it provides for;

- reinforcement of the 1989 Hague Child Abduction Convention – duties upon local authority of the child's habitual residence when deciding upon measures to protect children;
- parental duties over custody and contact – to ensure decisions taken by authorities where the child has habitual residence have primacy, unless child protection issues override; and
- cross frontier placement – co-operation between States in relation to cases where children are placed in foster or institutional care.

10. Welsh Ministers will be designated as the Central Authority for Wales to fulfil the main functions to be discharged under Chapter V (Articles 29 - 35) of the Convention. These will require co-operation between the Central Authority, local authorities and Cafcass Cymru for the purposes of communicating information to other Contracting States in respect of:-

- facilitating mediation and agreed solutions for the protection children and their property;
- discovering the whereabouts of a child considered to be in need of protection;
- responding to requests for reports about the welfare of a child, rights of access for parental contact, and information or evidence about the suitability of a parent to exercise access and conditions of access; and
- placement of children in foster or institutional care.

11. In addition, Articles 36 and 37 place clear duties on Contracting States about measures of protection where a child is exposed to serious danger, and establish limitations on sharing information that may place a child at risk or threaten the liberty or life of the child's family.

## Questions

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

**Question 1.** Do you have any comments on the technical framing of the proposed implementing regulations (draft regulations are at Annex B. You may also wish to refer to the issues and questions raised in MOJ's technical consultation document at Annex C)?

**Question 2.** A priority, in shaping the regulations, has been to ensure that delivery partners have the powers they need to share information, taking account of the requirements of the Data Protection Act – see Regulations 9 to 11 as well as the powers under Regulation 13. Are there any issues you would wish to raise or highlight on these draft regulations?

**Question 3.** Implementation will bring new powers for our authorities to request reports and assistance from other countries. How can we ensure these new rights are used in a way which maximises benefits for children? What assistance or guidance might you need to do this? Are there particular barriers or concerns that need to be addressed?

**Question 4.** On the new duties or provisions which bear on delivery partners in paragraphs 12 and 13 of the main consultation document and set out in more detail in Annex D, what impact do you see these having? What needs to be considered in guidance to ensure that our authorities can fulfil these duties in an effective and resource-efficient way? What are your views on the proposed facility to charge for a report provided for under Article 35(2) raise any issues?

**Question 5.** Paragraph 15 of the main consultation document sets out plans to develop guidance and to promote effective working with and through the Central Authority. Are these plans helpful? Is there other action or support that you feel needs to be taken to ensure effective implementation or to guard against unnecessary burdens?

**Question 6.** How much of the co-operation and assistance provided for under this Convention (both help offered to other countries or assistance you request of others) is already undertaken by your organisation/local authority area? Has the type or level of work you undertake changed over recent years? What impact would you expect implementation of this Convention to have in your area?

Please send responses to this consultation, ideally in the form of a word document, to [Patrick.Harper@wales.gsi.gov.uk](mailto:Patrick.Harper@wales.gsi.gov.uk) by 4pm on Wednesday 28 April. If there are specific points on the framing of the regulations, it would be particularly helpful to receive these as early as possible.

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please tick here: