
ANNEX B

STATUTORY INSTRUMENTS

2010 No.

CHILDREN

**The Parental Responsibility and Measures for the Protection of
Children (International Obligations) (England and Wales and
Northern Ireland) Regulations 2010**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972^(a) in relation to private international law^(b), makes the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010.

(2) These Regulations come into force on the day on which the Convention enters into force for the United Kingdom, which date will be notified in the London, Edinburgh and Belfast Gazettes.

(3) These Regulations extend to England and Wales and Northern Ireland.

Interpretation

2. In these Regulations—

“Central Authority” has the meaning given by regulation 8(1);

“Contracting State” means a state party to the Convention;

“the Convention” means the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in respect of Parental Responsibility and Measures for the Protection of Children that was signed at The Hague on 19 October 1996^(c);

“the Council Regulation” means Council Regulation (EC) No. 2201/2003^(d) concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility;

(a) 1972 c. 68 (amended by the Legislative and Regulatory Reform Act 2006).

(b) S.I. 2008/1792

(c) Cm 7727

(d) OJ No. L338, 22.12.03, pp.1-29

“Department of Justice” means the Department of Justice in Northern Ireland;

“local authority” means—

- (a) in relation to England, the council of a county, a metropolitan district, the Council of the Isles of Scilly, a London borough or the Common Council of the City of London, and
- (b) in relation to Wales, the council of a county or a county borough;

“member State” means a member State of the European Union which is bound by the Council Regulation;

“public authority” means a body whose functions are wholly or mainly of a public nature;

“Welsh family proceedings officer” has the meaning given by section 35 of the Children Act 2004(a).

Power of court to remove stay under Article 8

3.—(1) This regulation applies where—

- (a) a court has exercised its power under Article 8 of the Convention to request an authority of another Contracting State to assume jurisdiction in relation to an application, and
- (b) the court has stayed proceedings on the application, and
- (c) Part 1 of the Family Law Act 1986(b) does not apply in relation to the application.

(2) The court may remove a stay granted in order for it to exercise its powers under Article 8 of the Convention, and withdraw any request made by it under that Article to an authority]in another Contracting State to assume jurisdiction, if—

- (a) the authority in the other Contracting State does not assume jurisdiction within the period for which the court granted the stay, or
- (b) the parties do not, within the period specified by the court, request the authority in the other Contracting State to assume jurisdiction.

Local authorities: application to court to make request under Article 9

4.—(1) This regulation applies where—

- (a) a local authority in England and Wales wishes to make an application in respect of a child under section 31 of the Children Act 1989 (care and supervision orders), and
- (b) the authorities of another Contracting State have jurisdiction in respect of the child under the Convention.

(2) The local authority must make an application to the court requesting the court to exercise its power under Article 9 of the Convention (request to competent authority of the Contracting State of the habitual residence of the child for authorisation to exercise jurisdiction).

Local authorities: application for interim care order or supervision order

5.—(1) This regulation applies where—

- (a) a local authority in England and Wales thinks that the conditions in section 31(2)(a) and (b) of the Children Act 1989(c) (threshold for care and supervision orders) apply in relation to a child, and
- (b) one of the following applies in relation to the child—
 - (i) Article 11 of the Convention (measures of protection in cases of urgency),
 - (ii) Article 12 of the Convention (measures of a provisional character), or

(a) 2004, c. 31.

(b) 1986, c. 55.

(c) 1989, c.41

- (iii) Article 20 of the Council Regulation (provisional and protective measures).
- (2) Where this regulation applies, section 38 of the Children Act 1989 has effect as if—
 - (a) for subsection (1)(a) and (b) there were substituted—
 - “(a) a local authority makes an application for an interim care order or interim supervision order in relation to a child, and
 - (b) one of the following applies in relation to the child—
 - (i) Article 11 of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in respect of Parental Responsibility and Measures for the Protection of Children that was signed at The Hague on 19 October 1996 (measures of protection in cases of urgency) (“the Convention”),
 - (ii) Article 12 of the Convention (measures of a provisional character), or
 - (iii) Article 20 of Council Regulation (EC) No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (provisional and protective measures) (“the Council Regulation”),”,
 - (b) subsection (3) were omitted,
 - (c) in subsection (4)(b) the words “in the same proceedings” were omitted, and
 - (d) for subsection (4)(c) to (e) there were substituted—
 - “(c) in a case which falls within subsection (1)(b)(i) or (ii), when—
 - (i) the authorities in another Contracting State with jurisdiction under the Convention have taken the measures required by the situation, or
 - (ii) measures taken by the authorities of a non-Contracting State are recognised in England and Wales;
 - (d) in a case which falls within subsection (1)(b)(iii), when the court of the member State with jurisdiction under the Council Regulation has taken the measures it considers appropriate.”.
- (3) Where this regulation applies—
 - (a) section 31 of the Children Act 1989 has effect as if, in section 31(3A), after “care order” there were inserted the words “,other than an interim care order,”, and
 - (b) section 31A has effect as if subsection (5) were omitted.

Application of Article 15

6. The reference to Chapter II of the Convention in Article 15(1) of the Convention is to be read as including a reference to Chapter II of the Council Regulation.

Judicial authorities

7.—(1) The High Court is to have jurisdiction to entertain an application under Article 24 of the Convention for recognition, or non-recognition, of a measure taken in another Contracting State.

(2) But where the recognition or non-recognition of a measure is raised as an incidental question in another court, that court may determine the issue.

(3) The High Court is also to have jurisdiction—

- (a) to register a measure taken in another Contracting State for enforcement under Article 26 of the Convention, and
- (b) to entertain an application for a declaration—
 - (i) that a person has, or does not have, parental responsibility for a child by virtue of Article 16 of the Convention, or

- (ii) as to the extent of a person’s parental responsibility for a child by virtue of that Article.

Central authorities

8.—(1) The functions under the Convention of a Central Authority are to be discharged—

- (a) in England, by the Lord Chancellor,
- (b) in Wales, by the Welsh Ministers, and
- (c) in Northern Ireland, by the Department of Justice,

and a reference in these Regulations to a “Central Authority” means any of the Lord Chancellor, the Welsh Ministers or the Department of Justice in so far as they have functions under this regulation.

(2) If a person outside the United Kingdom does not know to which Central Authority in the United Kingdom a communication should be addressed, the person may address it to the Lord Chancellor.

Information sharing

9.—(1) Paragraphs (2) and (3) apply if a Central Authority receives a request for assistance under Article 31(c) of the Convention (either directly or via another Central Authority in the United Kingdom).

(2) The Lord Chancellor may request information from—

- (a) a local authority in England, or
- (b) the Secretary of State.

(3) The Welsh Ministers may request information from—

- (a) a local authority in Wales,
- (b) a Local Health Board (within the meaning given by section 11 of the National Health Service (Wales) Act 2006(a)), or
- (c) an NHS Trust (within the meaning given by section 18 of that Act).

(4) A person who receives a request for information under this regulation must comply with the request as soon as reasonably practicable (but this is subject to Article 37 of the Convention).

Requests for information under Council Regulation

10.—(1) This regulation applies if the designated Central Authority in England and Wales under Article 53 of the Council Regulation receives a request for information from another member State under Article 55(a)(i) of the Council Regulation.

(2) The designated Central Authority in England and Wales may request information from—

- (a) a local authority in England,
- (b) a local authority in Wales,
- (c) the Secretary of State,
- (d) an officer of the Children and Family Court Advisory and Support Service,
- (e) a Welsh family proceedings officer,
- (f) a Local Health Board (within the meaning given by section 11 of the National Health Service (Wales) Act 2006(b)), or
- (g) an NHS Trust (within the meaning given by section 18 of that Act).

(a) 2006, c. 42.

(b) 2006, c. 42.

(3) A person who receives a request for information under this regulation must comply with the request as soon as reasonably practicable.

Power to request report on child's situation

11.—(1) This regulation applies where a Central Authority thinks it appropriate to provide a report on the situation of a child under Article 32(a) of the Convention.

(2) The Lord Chancellor may—

(a) request a written report on the situation of the child from—

(i) a local authority in England, or

(ii) an officer of the Children and Family Court Advisory and Support Service, or

(b) if a written report has been provided to a court in relation to the child, request a copy of the report from the court.

(3) The Welsh Ministers may—

(a) request a written report on the situation of the child from—

(i) a local authority in Wales, or

(ii) a Welsh family proceedings officer, or

(b) if a written report has been provided to a court in relation to the child, request a copy of the report from the court.

(4) The Department of Justice may—

(a) request a written report on the situation of the child from a public authority [or other person] in Northern Ireland, or

(b) if a written report has been provided to a court in relation to the child, request a copy of the report from the court.

(5) A person in England and Wales who receives a request for a report under this regulation must comply with the request as soon as reasonably practicable (but this is subject to Article 37 of the Convention).

Local authorities: requirement to provide a report

12.—(1) This regulation applies if a local authority in England and Wales is contemplating—

(a) placing a child in another Contracting State, within the meaning given by Article 33 of the Convention, or

(b) placing a child in another member State, within the meaning given by Article 56 of the Council Regulation.

(2) Either the court or the local authority, whichever has jurisdiction under Articles 5 to 10 of the Convention or Articles 8 to 14 of the Council Regulation, as the case may be (“the authority”)—

(a) must provide a report to the Central Authority, or other competent authority, of the other Contracting State in accordance with Article 33(1) of the Convention, if the authority is exercising jurisdiction under the Convention, or

(b) must consult the Central Authority, or other competent authority, of the other member State in accordance with Article 56 of the Council Regulation, if the authority is exercising jurisdiction under the Council Regulation.

Power to respond to a request under Article 34

13. A public authority in England and Wales may provide information in response to a request communicated to it by the Central Authority under Article 34 of the Convention.

Services under Article 35

14.—(1) The Secretary of State may charge a reasonable fee in respect of the provision of a service under Article 35 (1) or (2) of the Convention.

(2) The Welsh Ministers may charge a reasonable fee in respect of the provision of a service under Article 35(1) or (2) of the Convention.

(3) A request under Article 35(2) of the Convention is to be made to the local authority in whose area the parent making the request resides.

(4) A local authority in England may charge a reasonable fee for the provision of information or evidence under Article 35(2).

(5) A local authority in Wales may charge a reasonable fee in respect of the provision of a service under Article 35(1) or (2) of the Convention.

(6) A fee is “reasonable” for the purposes of this regulation if the income from fees of that kind equates as nearly as possible to the costs of providing the service to which the fees relate (including a reasonable share of expenditure which is referable only partly or only indirectly to the provision of that service).

Amendments to other enactments

15. The Schedule contains amendments to other enactments consequential on the entry into force of the Convention for the United Kingdom.

Signatory text

Address	<i>Name</i>
Date	[Parliamentary Under Secretary of State] Ministry of Justice

SCHEDULE

Regulation 15

Consequential amendments

Magistrates’ Courts Act 1980

1. In section 65(1) of the Magistrates’ Courts Act 1980(a) (meaning of “family proceedings”)—

(a) in the opening words after “enactments” insert “and other instruments”,

(b) after paragraph (s) insert—

“(t) the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in respect of Parental Responsibility and Measures for the Protection of Children that was signed at The Hague on 19 October 1996;”, and

(c) in sub-paragraphs (i) and (ii) after “enactments” insert “or instruments”.

Senior Courts Act 1981

2. In paragraph 3 of Schedule 1 to the Senior Courts Act 1981(b) (matters assigned to the Family Division), after sub-paragraph (f)(v) insert—

(a) 1980, c. 43, as amended.

(b) 1981, c. 54, as amended.

“(vi) the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in respect of Parental Responsibility and Measures for the Protection of Children that was signed at The Hague on 19 October 1996;”.

Child Abduction and Custody Act 1985

3. In section 9 of the Child Abduction and Custody Act 1985(a) (suspension of court’s powers in cases of wrongful removal), after paragraph (b) insert—

“(ba) registering or enforcing a decision under the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in respect of Parental Responsibility and Measures for the Protection of Children that was signed at The Hague on 19 October 1996 (“the 1996 Convention”), except where provisions of the 1996 Convention are invoked in accordance with Article 50 of the 1996 Convention;”.

Family Law Act 1986

4. The Family Law Act 1986(b) is amended as follows.

5. In section 2—

- (a) in subsection (1)(a), after “the Council Regulation” insert “or the Hague Convention”,
- (b) in subsection (1)(b), for “the Council Regulation does not apply” substitute “neither the Council Regulation nor the Hague Convention applies”,
- (c) in subsection (3)(a), after “the Council Regulation” insert “or the Hague Convention”, and
- (d) in subsection (3)(b), for “the Council Regulation does not apply” substitute “neither the Council Regulation nor the Hague Convention applies”.

6.—(1) In section 5(2) (power of court to refuse application or stay proceedings: England and Wales)—

- (a) after paragraph (a) leave out “or”,
- (b) after paragraph (b) leave out “or”,
- (c) after paragraph (c) insert— “, or
“(d) that it should exercise its powers under Article 8 of the Hague Convention (request to authority in another Contracting State to assume jurisdiction),” and
- (d) after “Article 15” in the words following paragraph (c), insert “of the Council Regulation or Article 8 of the Hague Convention”.

(2) After section 5(3A) insert—

“(3AA) The court may remove a stay granted in order for it to exercise its powers under Article 8 of the Hague Convention, and withdraw any request made by it to an authority in another Contracting State to assume jurisdiction, if—

- (a) the authority in the other Contracting State does not assume jurisdiction within the period for which the court granted the stay, or
- (b) the parties do not, within the period specified by the court, request the authority in the other Contracting State to assume jurisdiction.”

(3) In section 5(3B) for “or (3A)” substitute “, (3A) or (3AA)”.

7. In section 19—

- (a) in subsection (1)(a), after “the Council Regulation” insert “or the Hague Convention”,
- (b) in subsection (1)(b), for “the Council Regulation does not apply” substitute “neither the Council Regulation nor the Hague Convention applies”,

(a) 1985, c.60, as amended.
(b) 1986, c. 55, as amended.

- (c) in subsection (3)(a), after “the Council Regulation” insert “or the Hague Convention”, and
- (d) in subsection (3)(b), for “the Council Regulation does not apply” substitute “neither the Council Regulation nor the Hague Convention applies”.

8.—(1) In section 22(2) (power of court to refuse application or stay proceedings: Northern Ireland)—

- (a) after paragraph (a) leave out “or”,
- (b) after paragraph (b) leave out “or”,
- (c) after paragraph (c) insert— “, or
 - “(d) that it should exercise its powers under Article 8 of the Hague Convention (request to authority in another Contracting State to assume jurisdiction),” and
- (d) after “Article 15” in the words following paragraph (c), insert “of the Council Regulation or Article 8 of the Hague Convention”.

(2) After section 22(3A) insert—

“(3B) The court may remove a stay granted in order for it to exercise its powers under Article 8 of the Hague Convention, and withdraw any request made by it to an authority in another Contracting State to assume jurisdiction, if—

- (a) the authority in the other Contracting State does not assume jurisdiction within the period for which the court granted the stay, or
- (b) the parties do not, within the period specified by the court, request the authority in the other Contracting State to assume jurisdiction.”

9. In section 42(1) (interpretation), after the definition of “the Council Regulation” insert—

““the Hague Convention” means the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in respect of Parental Responsibility and Measures for the Protection of Children that was signed at The Hague on 19 October 1996.”

Mental Capacity Act 2005

10. In Schedule 3 to the Mental Capacity Act 2005—

- (a) in paragraph 4, after “means” insert (subject to sub-paragraph (2)), and
- (b) after the existing provision in paragraph 4 (which becomes sub-paragraph (1)), insert—
 - “(2) But “adult” does not include a child to whom either of the following applies—
 - (a) the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in respect of Parental Responsibility and Measures for the Protection of Children that was signed at The Hague on 19 October 1996;
 - (b) Council Regulation (EC) No. 2201/2003(a) concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.”

(a) OJ No. L338, 22.12.03, pp.1-29