COUNTRY REPORT UNITED KINGDOM

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1. GENERAL BACKGROUND

The United Kingdom comprises three distinct jurisdictions, England and Wales, Scotland and Northern Ireland.[1]

In all jurisdictions of the UK, a common law system operates, however, the majority of child law is governed by statute. The Family Law Act 1986, deals primarily with jurisdiction, recognition and enforcement of orders and powers among the legal systems within the UK, and the jurisdiction of the courts in respect of children in an international context. In England and Wales, the main statute affecting child law is the Children Act 1989. In Scotland, the principal legislation dealing with children issues is the Children (Scotland) Act 1995. In drafting this Act, the legislature clarified the issue of custody rights with regard to Scottish law, recognising that under the Convention, it is essential to know the scope of such rights.[2] Some of the common law and statutory remedies existing prior to the Act also remain. In Northern Ireland, family law is primarily governed by the Children (Northern Ireland) Order 1995[3] which came into force in 1996. Jurisdiction, recognition and enforcement issues in the UK, as in other EU States,[4] have been complicated by the Brussels II Regulation[5] which came into force on 1 March 2001 and which has priority over the Family Law Act 1986.

1.1 Implementation of the Convention

The UK ratified the 1980 Hague Convention on the Civil Aspects of International Child Abduction on behalf of its jurisdictions on 1 August 1986 when the Child Abduction and Custody Act 1985 (the 1985 Act), came into force. The UK was the fifth Contracting State to the Convention.[6] The ratification has since been extended

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[1] Interpretation Act 1978 Sch. 1.

[2] Beaumont, P and McEleavy, P. *The Hague Convention on International Child Abduction* Oxford University Press 1999, p. 49. See also Children (Scotland) Act 1995, Schedule 4, para. 37 on making the Child Abduction and Custody Act 1985.

[3] SI 1995/755 (N.I 2).

[4] With the exception of Denmark which is not a party to this Regulation.

[5] Council Regulation (EC) No. 1347/2000 of 28 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses OJ No. L160, 30.6.2000, p. 19.

[6] Canada, France, Portugal and Switzerland had previously ratified the Convention.

to the Isle of Man, the Falkland Islands, the Cayman Islands, Bermuda and Montserrat.[7] With the implementation of the 1985 Act, the UK also ratified the 1980 European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children.[8]

1.2 OTHER CONTRACTING STATES ACCEPTED BY THE UK

The UK as a member State of the Hague Conference ratified the Convention and as with all other Contacting States it must accept all other ratifications. Nevertheless, under Article 38, non-Member States may accede to the Convention and Contracting States are not obliged to accept accessions. Before accepting accessions the Foreign and Commonwealth Office consults with their posts abroad in order to determine whether the acceding State has "established an effective central authority, has an adequate social services system and has a compatible legal system".[9] Until the end of 2001, the UK had not accepted an accession since 1 May 1998 when it accepted that of Turkmenistan. However, the UK has accepted the accession of Malta and the Convention came into force between the two States on 1 March 2002. Statutory Instruments are issued detailing Contracting States with whom the Convention is in force with the UK.[10] However, these are often produced late and as such can be out of date.[11]

For a full list of all States for whom the Convention is in force with the UK, and the dates that the Convention entered into force for the relevant States, see the Appendix.

1.3 BILATERAL AGREEMENTS WITH NON-CONVENTION STATES

The UK currently has no bilateral agreements with non-Convention States. The UK policy is to encourage accessions where States have legal systems compatible with the Convention, but not where legal systems are incompatible.[12] The Prisoners and Child Abduction Unit of the Foreign and Commonwealth Office set up in April 2000, is currently exploring the use of Memorandums of Understanding with non-Convention States, whose legal systems are not compatible with the Convention, with the aim of securing bilateral agreements.

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[7] See The Child Abduction and Custody Act 1985 (Isle of Man) Order 1994 SI 1994/2799; The Child Abduction and Custody (Falkland Islands) Order 1996 SI 1996/3156; The Child Abduction and Custody (Cayman Islands) Order 1997 SI 1997/2574. To date there is no Statutory Instrument recognising the extensions to Bermuda and Montserrat. According to the Convention web site operated by the Permanent Bureau of the Hague Conference, the Convention entered into force for both these Territories on 1 March 1999. See *http://www.hcch.net/e/status/abdshte.html*

[8] Also known as the Luxembourg Convention.

[9] See England and Wales' response to the questionnaire concerning the practical operation of the Convention and views on possible recommendations, sent out by the Permanent Bureau of the Hague Conference prior to the Fourth Special Commission. (Hereafter 'England and Wales' Response to the Hague Questionnaire').

[10] The latest Statutory Instrument is the Child Abduction and Custody (Parties to Conventions) (Amendment) Order 2001 SI 2001/3923.

[11] The latest Statutory Instrument is dated 11 December 2001, and until this point, the ratifications of Turkey in 2000 and Slovakia in 2001 had not been recognised in English internal law.

[12] See England and Wales' Response to the Hague Questionnaire, op. cit., n. 9.

A model bilateral agreement with Egypt in the form of a non-binding Memorandum of Understanding is currently being considered. It will focus on achievable goals such as a right of entry and exit to Egypt and the UK and a right of access for the left-behind parent. This will have effect in all three jurisdictions of the UK when it enters into force. According to Reunite – the International Child Abduction Centre,[13] the leading UK charity specialising in child abduction, about 40% of abductions from the UK are to non-Convention States.

Additionally, the EU Member States are exploring the possibility of arrangements with non-Convention States chiefly in North Africa.

1.4 CONVENTION NOT APPLICABLE TO INTERNAL ABDUCTIONS

Abductions between jurisdictions in the UK are not dealt with under the Convention but are subject to the provisions of the Family Law Act 1986. This Act establishes a procedure whereby a 'Part I order'[14] made in one part of the UK, in relation to a child under the age of 16, will be recognised in any other part of the UK.[15] They can be registered in courts in another part of the UK and where this has been done, an application can be made to the court for an order to be enforced as if it were one of the court's own orders.[16]

2. THE ADMINISTRATIVE AND JUDICIAL BODIES DESIGNATED UNDER THE CONVENTION

2.1 CENTRAL AUTHORITIES

The Central Authority for England and Wales and Northern Ireland is the Lord Chancellor,[17] while in Scotland the Central Authority is the Minister for Justice.[18] The Child Abduction Unit, situated in the Official Solicitor's Department in London, fulfils the obligations of the Central Authority for England and Wales. The Unit is headed by a lawyer and comprises a divisional manager and two full time administrative staff who work solely on abduction, under both the Hague and European Conventions. They do not however deal with abductions involving non-Convention States, which are dealt with by the Foreign and Commonwealth Office. The Child Abduction Unit has a small budget, only £205,000 in the financial year ending April 2000.[19] Much of this budget is spent on translation which the Central Authority undertakes in all cases where it is needed.[20] The lawyer is on

[13] Reunite receives government funding jointly from the Lord Chancellor's Department, the Foreign and Commonwealth Office and the Home Office. (Hereafter 'Reunite').
[14] Family Law Act 1986 s 25. See Lowe N. *The Family Law Act 1986 – A Critique* [2002] Fam Law 39.
[15] Family Law Act 1986 s 36.
[16] Family Law Act 1986 s 29 (1).
[17] Child Abduction and Custody Act 1985 s 3 (1) (a).
[18] Although the Child Abduction and Custody Act 1985 refers to the Scottish Central Authority as the Secretary of State (see s 3 (1) (b)), by reason of the Scotland Act 1998 s 53, the Minister of Justice is the Central Authority.
[19] See National Report of the Delegation of England and Wales, Overview of Procedural and Substantive Law Regarding International Child Custody and the Hague Abduction Convention presented at the Common Law Judicial Conference held in Washington, DC, September 2000. (Hereafter 'National Report for England and Wales').
[20] The Central Translators in London charge £25 per page for translation.

hand to vet problematic cases but as a general rule the Central Authority has a limited administrative function. In fact the Central Authority for England and Wales, has the smallest staff in proportion to the number of cases it handles, compared with any other Central Authority. However, as it deals solely with abduction cases, and has no other responsibilities, it is able to act efficiently and expeditiously. The Central Authority for England and Wales is designated as the Central Authority to which all applications may be sent for transmission to the relevant Central Authority within the UK.[21] However, in practice applications are sent directly to the Central Authority of the relevant jurisdiction.

In Scotland, the duties of the Central Authority are discharged by the Scottish Central Authority, which is situated in the Civil Justice and International Division of the Scottish Executive Justice Department based in Edinburgh. Each Branch within the International Division is headed by a practising solicitor, and overall responsibility lies with the head of the Division who is also a practising solicitor. The Scottish Central Authority comprises one full time member of administrative staff and one quarter of the time of a policy adviser. Under the 1985 Act, any application to the UK may be addressed to the Lord Chancellor as the Central Authority[22] for the UK, but where the application involves Scotland, it will be passed to the Secretary of State.[23] In practice applications are made directly to Scotland. The Scottish Central Authority has access to a legal library and national and international databases both on CD-ROM and through the Internet.[24]

The Northern Ireland Court Service undertakes the duties of the Central Authority in Northern Ireland. There are no dedicated resources and the relevant functions are discharged by an administrator and a lawyer (requiring one quarter and one fifth of their respective time). A web site is currently under construction. The Central Authorities for the UK can be contacted at the following addresses:

ENGLAND AND WALES
Child Abduction Unit
81 Chancery Lane
London
WC2A 1DD
ENGLAND
Tel: +44 20 7911 7047 / 7045
Fax: +44 20 7911 7248
Email: *enquiries@offsol.gsi.gov.uk*
http://www.offsol.demon.co.uk/caunitfm.htm
For emergency applications to the court outside office hours, tel: +44 20 7936 6000

SCOTLAND
Central Authority for Scotland
Scottish Executive, Justice Department
Civil Justice and International Division,
St Andrew's House, Regent Road
Edinburgh EH1 3DG
SCOTLAND
Tel: +44 131 244 4827 / 4829
Fax: +44 131 244 4848
marcus.houston@Scotland.gsi.gov.uk
laura.mulheron@Scotland.gsi.gov.uk

[21] Under Article 6 (1). See Hague web site *http://www.hcch.net/e/authorities/caabduct.html#uk*
[22] Child Abduction and Custody Act 1985 s 3 (2).
[23] Child Abduction and Custody Act 1985 s 3 (3).
[24] See National Report for Scotland, Overview of Procedural and Substantive Law Hague Convention on the Civil Aspects of International Child Abduction 25 October 1980 presented at the Common Law Judicial Conference held in Washington, DC, September 2000. (Hereafter 'National Report for Scotland').

NORTHERN IRELAND
Northern Ireland Court Service
Civil and Family Branch
21st Floor, Windsor House
9 – 15, Bedford Street
Belfast, BT2 7LT
NORTHERN IRELAND
Tel: +44 28 9032 8594
Fax: +44 28 9031 4854

MONTSERRAT
The Attorney General
Attorney General's Chambers
Montserrat
WEST INDIES

THE CAYMAN ISLANDS
The Attorney General
Government Administration Building
Grand Cayman
CAYMAN ISLANDS

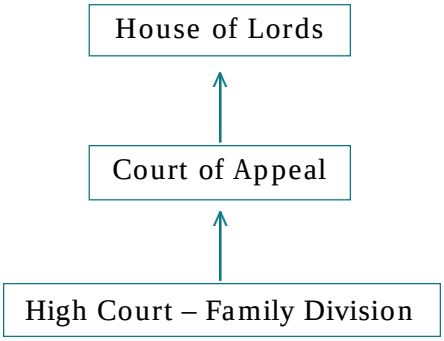
THE FALKLAND ISLANDS
The Governor
Government House
Stanley
FALKLAND ISLANDS

ISLE OF MAN
HM Attorney General for the Isle of Man
Attorney General's Chambers
Douglas
ISLE OF MAN
Tel:+44 1624 262 262
Fax: +44 1624 629 162

BERMUDA
The Attorney General
Attorney General's Chambers
Global House
43, Church Street
Hamiton HM 12
BERMUDA

2.2 COURTS AND JUDGES EMPOWERED TO HEAR CONVENTION CASES

2.2.1 ENGLAND AND WALES

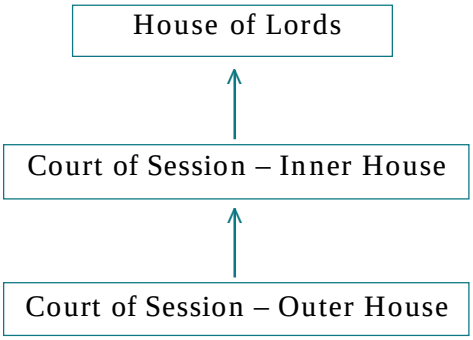


In England and Wales all Convention cases are heard at first instance by the Family Division of the High Court.[25] This is the highest court of original jurisdiction in family cases. Appeals from the Family Division of the High Court are to the Court of Appeal, and appeals from the Court of Appeal are to the House of Lords. Including the President of the Family Division there are 18 judges empowered to hear Convention cases at first instance. In the Court of Appeal there are 35 Lords Justices of Appeal, currently three of whom specialise in family law. Appeals are normally heard by three judges one of whom will be a specialist

[25] Child Abduction and Custody Act 1985 s 4 (a).

family judge. In the House of Lords there are 11 Lords of Appeal in Ordinary.[26] Restricted jurisdiction, the high level of court, and the significant number of Convention cases that are heard in England and Wales on an annual basis, allow for expertise both amongst judges, advocates and legal advisers. There is also a significant body of jurisprudence which has developed under the Convention as many High Court cases are reported.[27]

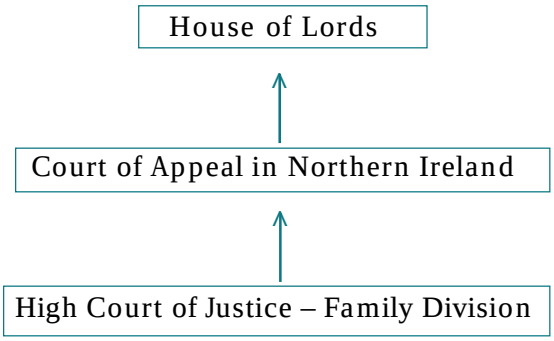
2.2.2 SCOTLAND



In Scotland applications for return are heard in the Court of Session in Edinburgh,[28] where advocates and solicitor-advocates have exclusive rights of audience. Their services will be required to represent parties at a hearing. There are 424 advocates able to appear in the Court of Session. The Court of Session is a Collegiate Court consisting of 32 judges. Potentially all 32 judges have jurisdiction at first instance and on appeal to hear a Convention case, but in practice specialisation occurs. In civil matters when sitting as a first instance court, the Court of Session is known as the "Outer House". Like the High Court in England and Wales, the Outer House of the Court of Session is the most senior court of first instance in Scotland. The Outer House consists of 19 Lords Ordinary. Applications under the Convention are heard by a judge sitting alone in the Outer House. Appeal is to one of the Divisions of the "Inner House". The most senior judges sit in appeal cases, as a bench of three or more. In contrast to England and Wales there is no specialist Family Division in the Court of Session. However, over the last 10 years or so a specialist bar dealing with family law issues has developed. Further appeals from the Inner House of the Court of Session are to the House of Lords.

[26] National Report for England and Wales, op. cit., n. 19.
[27] See Lowe, N. *The 1980 Hague Convention: An English Viewpoint* (2000) 33 N.Y.U. J. INT'L L. & POL. 179, p. 188, n. 38.
[28] Child Abduction and Custody Act 1985 s 4 (b).

2.2.3 NORTHERN IRELAND



In Northern Ireland all return applications are heard in the Family Division of the High Court of Justice.[29] There are currently seven High Court judges, one of whom is specifically assigned to the Family Division. Appeal from the High Court is to the Court of Appeal in Northern Ireland, which normally comprises three judges. Appeal from the Court of Appeal is to the House of Lords.

3. OPERATING THE CONVENTION – INCOMING APPLICATIONS FOR RETURN

3.1 LOCATING THE CHILD

Upon receiving an application the Central Authority must take steps to discover the child's whereabouts. Various government agencies, including the Department of Social Security, the Department of Work and Pensions, the National Health Service and the Office of Population Census and Surveys, can be ordered to help to trace a child if child proceedings are underway. The court in such proceedings can also order any person to reveal the location of the child.[30] Failure to comply, if satisfied beyond reasonable doubt, is punishable as contempt, which includes possible imprisonment.

In England and Wales searches of property and recovery of children can be carried out by officers of the court or by the police.[31] In Northern Ireland such duties are discharged by the police.

3.2 CENTRAL AUTHORITIES PROCEDURE

In England and Wales, the Central Authority receives and checks the application and passes it to a solicitor from a panel of 20 firms, normally within 24 hours. The Central Authority has set itself an 80% target for forwarding applications to a solicitor within 24 hours, and one judge[32] has commented that the Central

[29] Child Abduction and Custody Act 1985 s 4 (a).
[30] Family Law Act 1986 s 33.
[31] Family Law Act 1986 s 34, and for application to Scotland see s 40 (2).
[32] Wall J in *Re S (Child Abduction: Delay)* [1998] 1 FLR 651, p. 660.

Authority "invariably achieves a 100% rate". The solicitor will issue proceedings in court immediately. If the respondent indicates a willingness to return a child voluntarily then this will be done through consent orders, however seeking voluntary resolution is not actively encouraged. As a result there tend to be fewer voluntary returns from England and Wales than from other Contracting States and more judicial returns. Recent research[33] for all cases commenced in 1999 showed that only 5% of applications to England and Wales resulted in a voluntary return compared with a global average of 18%, and 51% of applications resulted in a judicial return compared with a global average of 32%. Lowe and Perry[34] found that in 1996 8% of incoming applications to England and Wales resulted in a voluntary return, compared with 22% in outgoing applications.

In Scotland, once an application has been checked by the Central Authority, an applicant is put in contact with a solicitor who is accredited as a family or child law specialist, in the area where the child is believed to be.[35] Advice is taken from the Law Society of Scotland so that the Central Authority cannot be accused of favouring particular firms. The application is sent to the solicitor with a certificate entitling the applicant to automatic legal aid. The covering letter sent by the Central Authority encourages the solicitor to first seek a voluntary resolution.[36] The Central Authority in Scotland has commented[37] that there is no evidence that seeking voluntary resolution leads to delay.[38] Mediation is also a possibility and the parties might be referred to mediation either by a judge or by agreement between the agents.

The Central Authority in Northern Ireland instructs a solicitor to act on behalf of the applicant. Usually a solicitor will be instructed within 24 hours of receipt of an application, even if the proofs are incomplete. The Central Authority assumes a monitoring role and is kept informed of developments. If a respondent indicates a willingness to return the child voluntarily, a negotiated settlement is concluded with a consent order. However, seeking voluntary returns is not a priority and the procedure is similar to England and Wales where the aim is to get cases to court quickly.[39]

3.3 LEGAL REPRESENTATION

Applicants in Convention cases in the UK are represented by private lawyers. Representation is encouraged by the court, especially in international cases. In England and Wales, lawyers for the applicants are chosen from a panel of 20 solicitors firms. In Scotland a solicitor is hired in the area where the child is believed to be and a further solicitor is hired in Edinburgh where the Court of Session is situated.

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[33] Preliminary Document No. 3, *A Statistical Analysis of Applications made in 1999 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, drawn up by Professor Nigel Lowe, Sarah Armstrong and Anest Mathias and available at *http://www.hcch.net/e/conventions/reports28e.html* (Hereafter 'Preliminary Document No. 3').

[34] Lowe N and Perry A. *International Child Abduction - The English Experience* (1999) 48 ICLQ 127.

[35] National Report for Scotland, op. cit., n. 24.

[36] In 1999 8 of the 10 incoming return applications were concluded by the voluntary return of the child. See further at post 7.2.1.2.

[37] See Scotland's response to the questionnaire concerning the practical operation of the Convention and views on possible recommendations, sent out by the Permanent Bureau of the Hague Conference prior to the Fourth Special Commission. (Hereafter 'Scotland's Response to the Hague Questionnaire').

[38] See post at 7.2.1.3, and see also Preliminary Document No. 3, op. cit., n. 33.

[39] While evidence from cases commenced in 1999 shows that applications tend to go to court, these applications tend to be resolved slowly – see post at 7.3.1.2 and 7.3.1.3 and Preliminary Document No. 3, op. cit., n. 33.

3.4 COSTS AND LEGAL AID

The UK made a reservation to Article 26[40] concerning costs in Convention proceedings.[41] However, this reservation has not been implemented and consequently applicants seeking return from any of the three UK jurisdictions will be entitled to free "legal representation", (formerly legal aid),[42] with no means or merits test. In England and Wales, solicitors apply for a Legal Representation Certificate from the Community Legal Service section of the Legal Services Commission.[43] Costs of repatriation and expenses are not met by public funds, but costs associated with the application such as representation and translation are covered. There is means and merits tested "legal representation" available to the respondent but this is usually refused as the prospects of success are poor. With the introduction of the Human Rights Act 1998, in October 2000, there is the possibility that the discrepancy in the availability of "legal representation" to the two parties in a Convention case may be open to challenge.

In Scotland, once a solicitor has been appointed for an application, all documentation from the Central Authority is passed to him and he liases directly with the Legal Aid Board for his payment.[44] As in England and Wales, the applicant is entitled to non-means and non-merits tested legal aid.[45] Application is via a letter signed either by the client or the solicitor confirming that the matter involves a Convention application and the normal legal aid requirements should be dispensed with. Respondents are entitled to means and merits tested legal aid.

In Northern Ireland, the Central Authority instructs a solicitor who issues proceedings immediately, preparing documentation in conjunction with the applicant and liaising with the court administration to secure a prompt date for the hearing. Legal aid is available for all applicants with no means or merits test,[46] and legal aid is available for respondents on a means and merits test.

3.5 LEGAL PROCEEDINGS

In England and Wales an originating summons will be issued in the High Court under the 1985 Act. Child abduction proceedings are heard speedily and no adjournment may be for longer than 21 days.[47] Indeed, in addition to the Convention obligation to aim to conclude cases in six weeks,[48] English judges have set a target of six weeks in which to decide cases:

> "The goal for which we should strive in this jurisdiction, both at first instance and on appeal, should be 6 weeks from invitation to conclusion".[49]

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[40] *http://www.hcch.net/e/status/stat28e.html*
[41] Child Abduction and Custody Act 1985 s 11.
[42] For further information see the Lord Chancellor's Department web site at *http://www.open.gov/lcd*
[43] Community Legal Service (Financial) Regulations 2000, SI 2000/516, reg. 3 (1) (f) and Legal Services Commission's Funding Code (Part C s 20.24, 3C-280 (1)).
[44] National Report for Scotland, op. cit., n. 24.
[45] Civil Legal Aid (Scotland) Regulations 1996, SI 1996/2444 (S. 189), reg. 46.
[46] Legal Aid General Regulations (Northern Ireland) 1965, reg. 3A.
[47] Family Proceedings Rules 1991, SI 1991/1247, r 6.10.
[48] See Article 11 (2).
[49] Per Thorpe LJ in *Re C. (Abduction: Grave Risk of Physical or Psychological Harm)* [1999] Fam. 478, 488.

Convention hearings are usually on written evidence and lawyer's submissions. One drawback of this approach is that while it facilitates speed, there is the danger that return orders will be made in ignorance of a child's views.[50] Oral evidence is the exception and not the rule and there is no right to give oral evidence, it is only admissible with leave of the court. It has been stated[51] that:

> "There is a real danger that if oral evidence is generally admitted in Convention cases, it would become impossible for them to be dealt with expeditiously and the purpose of the Convention might be frustrated."

Usually oral evidence is only allowed where consent or acquiescence under Article 13a is raised. Separate representation for the child is rarely allowed. Hearings are adversarial but a judge will be actively involved in controlling the length and scope of the hearing, and the Central Authority exert influence through progress chasing. Judgments and orders are usually made available immediately after the final hearing, although in difficult cases they may be reserved, usually for no longer than 14 days.[52]

Where the child's objections are raised, the Children and Family Court Advisory and Support Service (CAFCASS) will be directed to produce a report on the child's objections and the extent to which he has attained sufficient age and understanding. If time permits a CAFCASS officer will submit a written report but if there is not sufficient time he will make his report orally at the final hearing. The benefit of using a CAFCASS officer to interview the child rather than a guardian or psychologist is that they are on hand working in the same building as the court, and can therefore be contacted at short notice. They are also familiar with the Convention and the narrow defences under it. Where an Article 13a defence is raised the court is required to hear it. In the English system it is very rare to establish a settled intention for an Article 12 defence.[53]

The burden of establishing an Article 13 defence rests on the defendant in the case. Article 13b has been narrowly defined[54] making it difficult to succeed where this defence is raised.[55] English law sometimes ignores the possibility or even the certainty of incarceration of the abductor when considering the Article 13b defence, as something deriving from the fact of abduction can not be used as a defence. It has been suggested that procedures are needed to mitigate the harshness of the system. Mirror orders, undertakings and judicial collaborations[56] are some examples of possible useful procedures. These may

[50] Lowe, op. cit., n. 27.

[51] Per Butler Sloss, LJ. in *Re F (A Minor) (Child Abduction)* [1992] 1 FLR 548 at 553 (CA).

[52] However, there have been cases where the reasons have not been handed down for a number of months after the decision, see in particular the House of Lords decision in *Re H, and others (Minors) (Abduction: Acquiescence)* [1998] AC 72. Seven months elapsed *in Re S (A Minor) (Custody: Habitual Residence)* [1997] 3 WLR 597. Cited in Beaumont & McEleavy, op. cit., n. 2, p. 250, n. 73.

[53] The view is held, that a settled intention cannot be shown where the child may have been misled as to the state of the left-behind parent.

[54] See *N v N (Abduction: Article 13 Defence)* [1995] 1 FLR 107; *Re S (A Minor) (Abduction)* [1999] 2 FCR 541, sub nom *Re S (Abduction: Return to Care)* [1999] 1 FLR 843; *Re M (Abduction: Intolerable Situation)* [2000] 1 FLR 930; *TB v JB (abduction: grave risk of harm)* [2001] 2 FCR 497, [2001] 2 FLR 515.

[55] See England and Wales' Response to the Hague Questionnaire, op. cit., n. 33. However, in 1999, of the 14 refused cases, 4 were refused solely on the basis of Article 13 b. See Preliminary Document No. 3, op. cit., n. 33.

[56] See post at 6.1.

help to give the rigorous application of the Convention, in England and Wales, a human face.

In Scotland, the appropriate procedure for handling Convention cases is set down in Rules of Court.[57] Court proceedings are commenced by a petition being served on the abducting parent. Immediately a petition is raised, the court may under s 5 of the 1985 Act, take necessary steps to secure the interim welfare of the child or to prevent any change in circumstances. The Court of Session also has power to order disclosure of the child's whereabouts and to limit publicity. After the petition is served, the respondent has a four day notice period in which to lodge a written response. Seven days after the expiry of this period the first hearing is held.

As child abduction cases are heard in Edinburgh, the solicitor in the area where the child is must then instruct another solicitor in the Edinburgh area. This adds an extra administrative layer and consequently it has been suggested that the practice of appointing a solicitor in the area where the child is located may be inappropriate. However, according to the Central Authority, there is a benefit in using a local solicitor as they may be able to resolve the case before there is any need to bring it before the court.

Convention cases are prioritised by the Keeper of Rolls, the court official responsible for setting the court's timetable. Until 1995 the Scottish procedure in child abduction cases was resistant to the widespread use of affidavits. Review in 1995 led to change.[58] By 1996[59] affidavit evidence was the accepted format for Convention cases. Oral evidence is now limited and only accepted "on special cause shown".[60] When an application is lodged in court, written evidence is lodged with it. At the first hearing of the application, the presiding judge will determine if other written evidence is required.

Prior to this change in rules, the primary way of determining the views of the child was on the basis of oral evidence. It has been suggested that the former procedure for ascertaining children's views must be allowed to continue in order to ensure that the child's right to be heard is not denied.[61] Others state that as the Convention case is merely a forum and not a merits hearing the views of the child should only be heard in very limited circumstances. Until a substantial body of case law is established, it will not be clear whether this new system will work as effectively as the English system on which it is based. However, according to Beaumont and McEleavy,[62] initial signs were encouraging.[63]

The need to hear the child was entrenched in domestic Scottish law including a presumption that a child over 12 years old had the maturity to be heard. Similarly the need for separate legal representation for the child was also entrenched.[64] However this has not been the case in Convention proceedings due to the

[57] See Rule 70.1 – 70.8 of the Rules of the Court of Session.
[58] See Lord Cullen, *Review of the Business of the Outer House of the Court of Session*, December 1995. Cited in Beaumont and McEleavey, op. cit., n. 2.
[59] The revision came into force on 5 August 1996.
[60] Rule 70.6 (5) of the Rules of the Court of Session.
[61] See Beaumont and McEleavey, op. cit., n. 2, p. 184.
[62] Ibid., p. 251.
[63] The authors, ibid., p. 251, cite the case of *Robertson v Robertson*, 1998 SLT 468.
[64] See Legal Capacity (Scotland) Act 1991 s 4A.

flexibility of the Scottish system which has meant that these domestic rules do not creep into Convention cases.[65]

Any defences must be raised at least three days prior to the date of the initial hearing, and written evidence to support the defence must be lodged at that time. The burden of proof is on the applicant to prove a prime facie case and then this burden shifts to the respondent who must prove defences on a balance of probabilities.[66] The Scottish courts have taken a hard line on Article 13 defences. With a limited number of legal advisers acting in Convention cases, they may well advise that such a defence if run is unlikely to succeed in the absence of convincing evidence. Consequently it is unlikely that Article 13 defences will be raised.[67] While this undoubtedly speeds up Convention cases and prevents the case from turning into a merits based decision, there is at least a danger that it may prevent those with genuine Article 13 concerns from running a valid Convention defence.

In Northern Ireland, as in the other UK jurisdictions, the need for speedy and summary procedure in Convention cases is recognised and oral evidence is rarely admitted. Legal proceedings in Northern Ireland are commenced by originating summons and most applications proceed by way of affidavits. The courts have taken a narrow approach to Article 13 defences and, as a result the respondent, who bears the burden of proof, is rarely able to establish a defence.[68] Article 13a defences are resolved by way of affidavit evidence while Article 13b defences invariably require a welfare report. Effort is made to ensure that these reports are produced promptly to minimise delays.[69] Where the court wishes to establish if a child is of sufficient age and understanding to make its views known, the court directs the social services to prepare a report in respect of the child and the alleged objections to return. If appropriate a judge may also speak to a child.

3.6 APPEALS

To appeal a decision in England and Wales permission is needed from the trial judge or by the Court of Appeal. An appeal will only be granted where the judge has misdirected himself in law or failed to give sufficient weight to a particular aspect of the case. Ordinarily an appeal in a Convention case will be heard within six weeks from permission being granted. Notice of appeal is 14 days, and 2 weeks later legal arguments have to be filed in court. Despite there being a vast jurisprudence of appeal cases, in 1999, only 2 of the 90 applications which went to court were appealed, whereas globally, 14% of cases which went to court in that year were appealed.[70]

[65] See Children (Scotland) Act 1995 s 11 (10). Currently the Rules of Court do not provide for service on a child in abduction cases.
[66] See Scotland's Response to the Hague Questionnaire, op. cit., n. 37.
[67] Research into cases in 1999 showed that only one case went to court and this case resulted in a return order. See Preliminary Document No. 3., op. cit., n. 33.
[68] However, in 1999 two of the six cases resulted in a judicial refusal. While this is a large proportion, numbers are small making meaningful analysis difficult. See Preliminary Document No. 3, op. cit., n. 33.
[69] See Northern Ireland's response to the questionnaire concerning the practical operation of the Convention and views on possible recommendations, sent out by the Permanent Bureau of the Hague Conference prior to the Fourth Special Commission. (Hereafter 'Northern Ireland's Response to the Hague Questionnaire').
[70] See Preliminary Document No. 3, op. cit., n. 33.

In Scotland there are few appeals against judicial decisions as grounds for appeal are limited to matters such as significant change in circumstance or the judge having misdirected himself. An appeal may be lodged with an appeal Division of the Inner House of the Court of Session within 21 days of the date of decision. Appeals are fast-tracked and are often heard within days of the first instance decision. Appeals to the House of Lords are rare.

In Northern Ireland, notice of appeal to the Court of Appeal must specifically state what is being challenged and why. However, the Court of Appeal is free to go beyond these grounds and review parts of the decision which have not been put forward when issuing the appeal. Usually, notice of appeal must be served on the other party within six weeks of the judgment. This time period can be extended by the court or with the written consent of the respondent. Arrangements are in place to expedite appeals to the House of Lords.[71]

3.7 ENFORCEMENT OF ORDERS

In all UK jurisdictions, failure to comply with an order puts the defendant in contempt of court which may result in imprisonment[72] or a fine.[73] In England and Wales the police and the Tipstaff can also be called upon to enforce orders. The Tipstaff is the enforcement officer for all issues falling under the jurisdiction of the courts.[74] The Tipstaff will take action to enforce or to ensure that there is no breach of orders in Convention cases. The person seeking to enforce an order must inform the court of the whereabouts of the parties concerned then the Tipstaff can carry out enquiries through the police, but he does not have the authority to investigate the location of missing persons. The police have authority to assist the Tipstaff as all orders are addressed to "all other constables and police officers it may concern".[75] A practical booklet has been issued by the National Ports Office entitled, *Child Abduction by Parents and Strangers*, which is a guide for police officers.[76] It is also possible to order that passports and travel documents be surrendered to the Tipstaff.[77]

The English courts are prepared to employ undertakings but accept that they should be limited. The possibility of undertakings are usually raised at the final hearing by the parties' legal representatives. English courts are also prepared to grant mirror orders to assist in the prompt return of children.[78]

In Scotland there is no summary power for police or court officials to force compliance, but in general return orders are complied with as there are funds to meet reasonable costs of return, and enforcement procedure is rarely invoked. Once a decision has been made to return the child, the Central Authority becomes involved in providing whatever administrative assistance is necessary. Where there is a risk of further abduction, occasionally the child is placed in foster care. There is a general unease that children should remain for more than a very short

[71] Nevertheless, appeals are relatively rare, Northern Ireland only handling a small number of cases.
[72] See Contempt of Court Act 1981 s 14 (1) for England and Wales and s 15 (2) for Scotland. Schedule 4 extends the provisions to Northern Ireland.
[73] See Contempt of Court Act 1981 s 14 (2) for England and Wales and s 15 (2) for Scotland. Schedule 4 extends the provisions to Northern Ireland.
[74] See Collins, S. *Tipstaff's Handbook Court Service*, October 1999, p. 9.
[75] See National Report for England and Wales, op. cit., n. 19.
[76] See Collins, op. cit., n. 74, p. 10.
[77] Ibid.
[78] See *Re P (A Child: Mirror Orders)* [2000] 1 FLR 435. Though this is not without jurisdictional difficulty if the child is not yet present or habitually resident in England.

period in foster care when the sole reason for them being there is the prevention of further abduction. It is also possible to delay the execution of an order where relevant undertakings or conditions have not been complied with.

The High Court in Northern Ireland is willing to accept the need for undertakings where necessary to achieve the safe return of the child. Generally, undertakings will be proposed by either party's legal representative. Experience in Northern Ireland suggests that the concepts of safe harbour orders and mirror orders are still in their infancy in the jurisdiction, but the courts will consider any proposals which assist the prompt return of children.[79]

4. OPERATING THE CONVENTION – INCOMING APPLICATIONS FOR ACCESS

4.1 / 4.2 CENTRAL AUTHORITIES PROCEDURE AND LEGAL PROCEEDINGS

In the leading case of *Re G*[80] the Court of Appeal held that Article 21 of the Convention, which is concerned with access, was directed towards Central Authorities and placed no obligation on the courts. Therefore, access applications in England and Wales are dealt with under the relevant domestic laws. When an application for access is received in England and Wales, the Central Authority initially refers the applicant to one of the lawyers from the panel used for return applications. These solicitors may recommend other local solicitors as it may be expensive to have a solicitor in London, where most of the panel are located, and it may also be impractical not to have a local lawyer if the case is in another part of England and Wales. Unlike return applications, the availability of free "legal representation" is judged on a means and merits test. The solicitor will apply for "legal representation" where necessary but delays are sometimes experienced as the forms may be sent back and forth to the foreign applicant for further information. A proposal is being considered, that the English Central Authority should help the applicant to fill out the necessary forms in an effort to reduce these potential delays.[81]

Applications for access in England and Wales are made under s 8 of the Children Act 1989 and the welfare of the child is the paramount consideration.[82] An access order is not required before making an access application and there is no presumption in favour of allowing access to a non-custodial parent. As applications are dealt with under domestic legislation, the processing of such applications is governed by the court's timetable and is not specifically expedited as with return applications.[83] On rare occasions the child will be given party status and represented by a CAFCASS officer. This would apply specifically to cases where the child is refusing to have access with a parent but may be being unduly influenced by the custodial parent.

[79] See Northern Ireland's Response to the Hague Questionnaire, op. cit., n. 69.
[80] *Re G* (*A Minor*) (*Enforcement of Access Abroad*) [1993] Fam 216.
[81] See England and Wales' Response to Hague Questionnaire, op. cit., n. 9, p. 2.
[82] Children Act 1989 s 1 (1).
[83] See post at 7.1.2.3, and see also Preliminary Document No. 3, op. cit., n. 33.

In Scotland the system for handling access applications has been reviewed. In the light of the leading case of *Donofrio v Burrell*,[84] Scotland has amended Rule 70.5(2) which deals with access applications under the Convention. The amendment took effect on 18 September 2001 and preserved the special expedited procedure used in all Convention applications, whilst clarifying the circumstances in which such an application can be brought. In this way, the Scottish system has not followed the English view stated in *Re G*.[85] Consequently, in cases pursued under the Convention legal aid is given on receipt of a valid application, and expedited procedures are invoked.[86] This is unlike the system in England and Wales and is a great benefit to applicants to Scotland.

In Northern Ireland applications for access are dealt with under the Children (Northern Ireland) Order 1995.[87] The welfare of the child is the court's paramount consideration and there is no legal presumption in favour of allowing access to the non-custodial parent. The Central Authority does not process access applications but it can facilitate the appointment of legal representation. As access applications are processed under domestic legislation, applicants are subject to a means and merits test when applying for "legal representation". However, during this application process, effort is made to keep delays to a minimum. The parties' legal representatives will often explore the possibility of an agreed settlement.

4.3 ENFORCEMENT OF ORDERS

If an access order is not complied with, the courts in England and Wales are able to fine or imprison the offender. Imprisonment of a custodial parent is unlikely as it is normally considered to be against the child's interests. The Children Act Sub-Committee has reviewed the issue of enforcement and the facilitation of access in a report submitted to the Lord Chancellor.[88] The English courts have experienced some difficulty in dealing with a small number of intractable access cases.

In Scotland and Northern Ireland if an access order is not complied with, the courts can impose civil remedies for contempt of court, including fines and imprisonment. In theory in Scotland, it would be possible to instruct officers of the court to enforce an order. In practice this rarely happens and any supervision required is often provided by a representative of a local authority social work department.

In all jurisdictions of the UK, conditions may be added to access arrangements to offset the possibility of a further abduction, such as supervised access at a known address or surrendering of the non-custodial parent's passport. Restrictions on the free movement of persons at least within Europe must however be justified under European Union law.[89]

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[84] *Donofrio v. Burrell* 2000 SLT 1051, 2000 SCLR 465, 1999 Fam LR 141.

[85] See n. 80.

[86] See Scott, J. 'Donofrio v Burrell – A Scottish Approach to Access Under the Hague Convention on the Civil Aspects of International Child Abduction' prepared for the International Child Abduction Conference, hosted by the Law Society of Scotland, Edinburgh 18 June 2002.

[87] SI 1995/755 (N.I. 2).

[88] *Making Contact Work – A Report to the Lord Chancellor*, 2002, on the facilitation of arrangements for contact between children and their non-residential parents and the enforcement of Court orders for contact.

[89] Scotland's Response to the Hague Questionnaire, op. cit., n. 37.

5. OPERATING THE CONVENTION – OUTGOING APPLICATIONS FOR RETURN

5.1. PREVENTING THE REMOVAL OF THE CHILD FROM THE JURISDICTION

5.1.1 CIVIL LAW

In England and Wales, the Children Act 1989 is a useful tool in preventing abductions. Where there is fear of abduction, an application may be made for a prohibited steps order and / or a residence order under this Act.[90] These orders can also be made in Northern Ireland.[91] These can be obtained ex parte and then enforced by the court to prevent the removal of a child from the jurisdiction. If a parent with whom the child normally lives already has a residence order in his or her favour, the court can order that the child be produced to the parent with the residence order.[92] An injunction can also be sought or the child can be made a ward of the High Court, which imposes an automatic prohibition on taking the child out of the UK. The removal of a ward outside of the UK without court leave is punishable as contempt. Where leave is given for the child's removal, there is a power in wardship to require that the person given leave enters into a bond to ensure that the child will be returned.

Where a contact order[93] is in force and it is feared that the person exercising contact may abduct the child, an application can be made to vary the order to provide that the contact must be supervised. Where there is a fear that a child will not be returned from a visit abroad, the court can order that the visit is only allowed on the condition that the person taking the child lodges a sum of money with the court, which will be forfeited if the child is not returned.[94]

In Scotland domestic remedies are available to prevent removal from the jurisdiction. These include interdict at common law and under section 11 (2) of the Children (Scotland) Act 1995. Section 2 (3) of that Act contains a provision restricting the removal of a child who is habitually resident in Scotland outside of the UK.

In the UK, the Port Alert System[95] can be activated to prevent abduction. This system can be utilised where there is a "real and imminent" danger of removal.[96] The system is operated by the police on a 24 hour basis, a "port stop" will be put in place at all points of departure from the jurisdiction, lasting for 28 days. After this time the child's name is automatically removed from the list and a further application must be made to reinstate the child's name. Applications for such assistance must be made by the applicant or the applicant's legal representative to their local police station. The police require information about the child, the applicant and the person likely to remove the child from

[90] Children Act 1989 s 8.
[91] See Articles 8 and 14 of the Children (Northern Ireland) Order 1995.
[92] Children Act 1989 s 14.
[93] Children Act 1989 s 8.
[94] This practice also applies to Northern Ireland, see Article 8 of the Children (Northern Ireland) Order 1995.
[95] See *Practice Direction* [1986] 1 ALL ER 983 and *The Child Abduction Act 1984: 'Port Stop' Procedures* Home Office Circular No 21/1986.
[96] A definition of "real and imminent" can be found in *The Child Abduction Act 1984: 'Port Stop' Procedures* Home Office Circular No 21/1986.

the jurisdiction, as well as likely travel details.[97] It is not necessary to have a court order for the police to act in this way, only a statement showing evidence of the applicants rights / responsibilities. Nevertheless, obtaining a court order can be beneficial as:

- It establishes that the applicant is bona fide which may help to convince the police of the need for action.
- It will enable the applicant to enlist the aid of government agencies to trace the child.
- It will entitle the court to order the surrender of a British passport and, on occasion, a foreign passport.
- The High Court can specifically order publicity to trace the child.

Sequestration is also a tool that can be used in England and Wales. Where a court order preventing removal exists and is broken, the court can order the sequestration of the person who broke the order's assets. These can then be sold and the money used to pay the costs of tracing a child and instituting proceedings abroad.[98]

Since 5 October 1998, it has no longer been possible to apply to put children on adults' passports. It is also possible to apply to restrict the issuing of a passport. An interested party may write to the Passport Office requesting that a passport should not be provided in respect of a minor unless certain consents are given.[99] Where a child already has a passport, the courts can order the surrendering of this passport.[100] Under s 37 of the Family Law Act 1986 where there is an order prohibiting or restricting the removal of a child from the UK, the court may require any person to surrender any UK passport which has been issued to or contains particulars of the child. This applies to orders issued under the Children Act 1989, the Children (Scotland) Act 1995 and the Children (Northern Ireland) Order 1995 and where removal is contrary to the wishes of the court. The UK Passport Agency has offices at seven UK locations. The contact details for these offices are available on the Internet[101] and are shown below:

National Call Centre: +44 870 521 0410

Belfast Passport Office
Hampton House
47 – 53 High Street
Belfast BT1 2QS
Northern Ireland

Durham Passport Office
Millburngate House
Durham
DH97 1PA

Glasgow Passport Office
3 Northgate
96 Milton Street
Cowcaddens
Glasgow G4 0BT

Liverpool Passport Office
5th Floor
India Buildings
Water Street
Liverpool L2 0QZ

[97] For a more detailed list of requirements, see *Practice Direction* [1986] 1 ALL ER 983.
[98] See *Mir v Mir* [1992] 1 ALL ER 765, and *Richardson v Richardson* [1989] 3 ALL ER 779.
[99] See *Practice Direction* [1986] 1 ALLER 983.
[100] See *Practice Direction* [1983] 2 ALLER 253.
[101] *http://www.ukpa.gov.uk*

London Passport Office
Globe House
89 Eccleston Square
London SW1V 1PN

Newport Passport Office
Olympia House
Upper Dock Street
Newport
Gwent NP20 1XA

Peterborough Passport Office
Aragon Court
Northminster Road
Peterborough
Cambridgeshire PE1 1QG

Reunite has also produced three child abduction prevention packs, one for England and Wales, one for Scotland and one for Northern Ireland. The English pack is available in English and in Hindi, Urdu, Gujarati, Punjabi and Bengali. It was launched in 1995 and over 3,000 packs have been distributed. These packs are available for purchase over the Internet.[102]

There are also various other means of preventing abduction. In the Family Law Act 1986, there are powers to order disclosure of a child's whereabouts,[103] and to order the recovery of a child.[104] The English and Northern Irish High Courts also have powers under their inherent jurisdiction to make a wide range of orders with regard to children including "seek and find" orders, and orders restraining persons from leaving the jurisdiction. Where there are orders prohibiting or restricting removal of a child from the UK, the High Court can also order the surrendering of passports under its inherent jurisdiction. It has been held that this power extends to ordering the surrender of a foreign nationals passport in the interests of the child's welfare.[105]

5.1.2 CRIMINAL LAW

In the UK, the Child Abduction Act 1984 establishes parental and non-parental child abduction as a criminal offence. The Act makes it a criminal offence for anyone "connected with"[106] a child under the age of 16, to "take or send" that child out of the UK without the requisite consents.[107] As it is an arrestable offence, it is also an offence to attempt to commit the offences in the Act.[108] Prosecutions under the Act are relatively rare.

[102] *http://www.reunite.org.uk*
[103] Family Law Act 1986 s 33.
[104] A search of property and recovery of children can be carried out by an officer of the court or the police by authority in the Family Law Act 1986 s 34.
[105] See *Re A-K (Minors) (Contact)* [1997] 2 FCR 563, sub nom *Re AK (Foreign Passport: Jurisdiction)* [1997] 2 FLR 569, CA; and cf. *B v B (Injunction: Jurisdiction)* [1998] 1 WLR 329, sub nom *B v B (Passport surrender: Jurisdiction)* [1997] 3 FCR 262, [1997] 2 FLR 148.
[106] A person is "connected with" a child if he / she is a parent, a guardian, a person with a residence order and a person with parental responsibility.
[107] Child Abduction Act 1984, s 1. This is however subject to various defences in s 1(5). Unusually, the prosecution must establish that the defences do not apply.
[108] In attempt cases the police powers of arrest derive from the Criminal Attempts Act 1981.

In England and Wales the maximum penalty for such offences is six months imprisonment and / or a fine on summary conviction,[109] and seven years imprisonment and / or a fine if convicted on indictment.[110] Although the Act may be a deterrent to anyone contemplating abducting a child, it does not establish any practical safeguards to prevent the removal of the child. Applications for extradition for criminal child abduction may be possible, but only against the abductor and not the child, in both incoming and outgoing cases, dependent on treaty arrangements between the UK and the other State.

In Scotland, unlike England and Wales, police assistance cannot be requested without the existence of a civil order.[111] Under s 7 of the 1984 Act, the police have the power of arrest without a warrant if they reasonably suspect a person is committing or has committed an offence. The penalties imposed in Scotland also differ from those in England and Wales. Under s 8, persons are liable to up to three months imprisonment and / or a fine on summary conviction[112] and up to two years imprisonment and / or a fine if convicted on indictment.[113]

In Scotland the common law offence of plagium can also be invoked. Plagium is the offence of stealing a child from an individual who holds parental rights. It would not be an offence for a parent with joint parental responsibility. However, it would be possible for a parent who has had parental rights removed or limited to commit this offence.[114] Plagium only extends to girls under the age of 12 and boys under the age of 14.

Under the criminal law the governing authority in Northern Ireland is the Child Abduction (Northern Ireland) Order 1985[115] and the law is the same as in England and Wales, the offence being an arrestable offence, the maximum penalty for which is seven years imprisonment. An order prohibiting a child's removal from one jurisdiction of the UK, which is made in any of the jurisdictions is effective throughout the whole of the UK.[116]

5.2 CENTRAL AUTHORITIES PROCEDURE

Where a child has been taken out of the UK to another Convention State, the Central Authority in the UK will request that the applicant or his / her solicitor fills out an application form, makes a written statement, if appropriate, and provides copies of any court orders. The Central Authority will then send the application, with any necessary translations, to the relevant Central Authority in the foreign State. The Central Authority in the UK will then monitor the progress of the case and liaise with the foreign Central Authority and the applicant.

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[109] Child Abduction Act 1984 s 4 (1) (a). The fine cannot exceed the statutory maximum see Criminal Justice Act 1982 s 74 (2).

[110] Child Abduction Act 1984 s 4 (1) (b). The fine cannot exceed the statutory maximum see Criminal Justice Act 1982 s 74 (2).

[111] Child Abduction Act 1984 s 6.

[112] Child Abduction Act 1984 s 8 (a). The fine cannot exceed the statutory maximum see Criminal Justice Act 1982 s 74 (2).

[113] Child Abduction Act 1984 s 8 (b). The fine cannot exceed the statutory maximum see Criminal Justice Act 1982 s 74 (2).

[114] See Hutchinson, A; Roberts, R and Setright, H. *International Parental Child Abduction* Family Law 1998, p. 206.

[115] Child Abduction (Northern Ireland) Order 1985 SI 1985/1638 (N.I. 17).

[116] Family Law Act 1986, s 36.

5.3 PROTECTION AND ASSISTANCE ON RETURN

The Central Authority in England and Wales provides an information sheet to respondent parents giving details of legal help and representation, financial support, accommodation and counselling services. The Central Authority will also alert appropriate child protection bodies when child protection issues are raised. Responsibility for the enforcement of undertakings primarily rests with the lawyer. There is some difficulty because the returning parent is only eligible for "legal representation" subject to a means and merits test. The Central Authority may refer a parent who is experiencing difficulty to Reunite.

The Central Authority in Scotland has stated[117] that Central Authorities could be more involved in providing appropriate reassurance and guidance to a returning parent. They intend to produce an information pack for returning parents. The Scottish Central Authority acts as a post box, taking a neutral stance and keeping parties informed.

Where a child is returned to Northern Ireland and there are allegations of abuse or violence the Central Authority in Northern Ireland will alert the social services and provide information on available services within the jurisdiction. Any necessary care arrangements for the child will be put in place by the social services. Where undertakings have been made either between the parties or at the request of the court, the courts in Northern Ireland are prepared to consider them. A returning abductor can apply for legal aid on a means and merits tested basis, to assist in legal proceedings in Northern Ireland. The abducting parent can also, under the Children (Northern Ireland) Order 1995,[118] seek to alter any order which has been made.

5.4 COSTS AND LEGAL AID

In England and Wales and Northern Ireland, "legal representation" in outgoing applications is only available subject to a means and merits test and the Central Authority for England and Wales has commented[119] that legal aid processes can cause delays in the requested State, particularly in access cases.

In outgoing applications from Scotland, staff at the Central Authority will take brief details over the telephone and will then send a questionnaire to the applicant. The cost of a solicitor in Scotland may be covered by the Scottish Legal Aid Scheme, but this will not extend to expenditure abroad. A current legal aid certificate for a custody order will also cover initiating the order's registration to make an outgoing Convention application. For persons without a certificate, help may be given under the advice and assistance scheme which is means tested.[120]

[117] See Scotland's Response to the Hague Questionnaire, op. cit., n. 37.
[118] SI 1995/755 (N.I. 2).
[119] England and Wales' Response to the Hague Questionnaire, op. cit., n. 9.
[120] See Hutchinson, et al., op. cit., n. 114, p. 202.

6. AWARENESS OF THE CONVENTION

6.1 EDUCATION OF THE CENTRAL AUTHORITIES, THE JUDICIARY AND PRACTITIONERS

The UK takes an active role in international conferences on child abduction. The UK is also home to Reunite a non-governmental organisation specialising in international child abduction which is involved in research and information gathering and the provision of training to professionals in the field of child abduction. Reunite works closely with the Lord Chancellor's Department, the Scottish Executive Justice Department, the Foreign and Commonwealth Office and the Home Office. Since 1990 Reunite has provided training for the Foreign and Commonwealth Office consular staff posted overseas. Reunite also administers the Parliamentary All Party Group on Child Abduction which was established in December 1990 and presently has a membership of 87 Members of Parliament. Reunite has secured funding from the Foreign and Commonwealth Office and the Law Society for the development and production of a training video for solicitors and other professionals.[121]

In England and Wales there is also a President's International Family Law Committee which is an ideal medium for promoting international liaisons for judges. One initiative to come from this Committee was an Anglo-German judicial conference on child abduction held in 1997 in Dartington, Devon. This was the first such judicial conference ever held on international child abduction. There has also been a common law judicial conference held in Washington, DC, in September 2000 at which English and Scottish judges were represented. They were similarly present at the Du Ruwenberg conference in 2001.

There have been cases where English judges have employed 'Judicial Collaboration' in Convention cases, notably the case of *Re M and J.*[122] There is no rule that a judge must consult with the parties prior to contacting another judge nor that the judge must relay the content of his conversation to the parties. The involvement of the parties in such matters may seem sensible but it is left to the discretion of the judge in the case. Thorpe LJ has been nominated to initiate and carry forward the creation of an international network of liaison judges. At the Fourth Special Commission on the Convention, the UK proposed that each State Party should appoint a Liaison Judge and that State Parties should actively encourage judicial co-operation.

As far as judicial co-operation in Scotland is concerned, the Scottish Central Authority has submitted[123] that direct judicial communication could be useful but that such communication should be fully documented and made available to parties. Ideally, the communication should be made in the presence of the parties' representatives. Scotland has nominated a liaison judge.[124] Reunite also provides specific training to Scottish professionals working in the field of child abduction.

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[121] Carter, D. *Child Abduction – The Role of the Central Authorities and Reunite* [2000] IFL 102.

[122] *Re M and J (Abduction: International Judicial Collaboration)* [2000] 1 FLR 803.

[123] See Scotland's Response to the Hague Questionnaire, op. cit., n. 37.

[124] Currently Lord Bonomy.

In Northern Ireland, there is support for the concept of direct judicial communications. However, it is recognised that strict controls and conditions must be applied. As in Scotland, the parties' representatives must be present and a note of the discussion must be made and circulated. In addition, the parties must consent to such communication taking place and discussion of the merits of the case is precluded.

The Association of Chief Police Officers in Scotland has also produced a guidance booklet on the unlawful removal of children for use by the Scottish forces.[125] This booklet was produced in October 2001 and was circulated amongst all police forces in Scotland in December 2001. The booklet should raise awareness of abduction issues in a country where abductions are relatively rare. It will provide officers with a source of reference about how to handle these cases and should thus prove to be a useful tool when officers encounter alleged abductions.

6.2 INFORMATION AND SUPPORT PROVIDED TO THE GENERAL PUBLIC

The Central Authority in England and Wales has produced a booklet containing advice for parents[126] and there is also a Scottish booklet produced by the Scottish Courts Administration which contains useful information.[127] This latter booklet is currently under review.

The Consular Division of the Foreign and Commonwealth Office may also be able to offer assistance to parents in child abduction issues and should be contacted where the abduction involves a State which is not a Contracting State to the Convention:

Foreign and Commonwealth Office
Consular Division
1 Palace Street
London SW1E 5HE
Tel: +44 20 7270 1500 for information on passports
Tel: +44 20 7008 0218 for information on non-Convention States
http://www.fco.gov.uk/travel/dynpage.asp?Page=351

Reunite operates a telephone advice line which is manned between 10:30 and 17:00 Monday to Friday. An answerphone service providing an emergency contact number operates out of hours. Advice is offered to either or both parties involved in a dispute and calls are treated confidentially. The relevant number is:

Tel: +44 20 7375 3440

Reunite has also produced various publications including a prevention pack and an information pack. These are available to purchase over the Internet.[128]

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[125] *Practical Police Guidance on the Unlawful Removal of Children Abroad* Association of Chief Police Officers in Scotland October 2001.
[126] *Child Abduction – Advice to Parents* 1996.
[127] *Child Abduction from Scotland* Scottish Courts Administration November 1996.
[128] *http://www.reunite.org/publ.html*

There is also a "Lawyer's Listing" of international and national lawyers who have expertise in handling child abduction cases. Recently, Reunite has concluded a pilot project on the use of mediation in Convention cases. They are about to begin a more detailed research study in this area. This research will be useful in giving parents the opportunity to seek voluntary resolution as required by the Convention.[129] Seeking voluntary resolution is to some extent neglected in the current systems in England and Wales and in Northern Ireland, though not in Scotland. Reunite can be contacted at the following address:

Reunite International Child Abduction Centre
PO Box 24875
London
England
E1 6FR
Tel: +44 20 7375 3441
Fax: +44 20 7375 3442
Email: *reunite@dircon.co.uk*
Web site: *http://www.reunite.org*

Missing Children UK also has a web site containing pictures of abducted children. This site is supported by the International Centre for Missing & Exploited Children.[130]

The UK Central Authorities do not however make good use of the Internet. There are some useful web pages on child abduction in England and Wales accessible via the Official Solicitor's Department web site,[131] and on the Foreign and Commonwealth Office web site. However, the Internet does not seem to be used to communicate child abduction issues as much as in other countries, notably, USA, Australia and Canada. At the time of writing, the Northern Irish Central Authority was in the process of constructing a web site and Scotland was considering taking a similar step. In Scotland they are aiming to attach pages to the Scottish Executive web site including more up to date information and downloadable copies of the application forms for both return and access. They are also intending to revise their current booklet and make it available in electronic form.

7. THE CONVENTION IN PRACTICE – A STATISTICAL ANALYSIS OF APPLICATIONS IN 1999[132]

The UK is second only to the USA in terms of the number of applications that it handled in 1999. The jurisdiction of England and Wales is by far the busiest of the UK jurisdictions and the Central Authority in England and Wales handled more applications than any other in 1999, the US having split incoming and outgoing applications between two separate bodies.

[129] See Articles 7 (c) and 10.
[130] *http://www.missingkids.co.uk*
[131] *http://www.offsol.demon.co.uk/caunitfm.htm*
[132] Preliminary Document No. 3, op. cit., n. 33.

Incoming return applications	165
Outgoing return applications	134
Incoming access applications	29
Outgoing access applications	29
Total Number of Applications	**357**

The table below shows the number of applications received and made by the different UK jurisdictions in 1999:

	Incoming Return	Incoming Access	Outgoing Return	Outgoing Access	**Total**
England and Wales	149	25	126	29	**329**
Scotland	10	3	5	0	**18**
Northern Ireland	6	1	3	0	**10**
Total	**165**	**29**	**134**	**29**	**357**

7.1. ENGLAND AND WALES

7.1.1 INCOMING APPLICATIONS FOR RETURN

7.1.1.1 THE CONTRACTING STATES WHICH MADE THE APPLICATIONS

Requesting States		
	Number of Applications	Percent
USA	34	23
Australia	16	11
France	13	9
Ireland	13	9
Italy	9	6
Germany	8	5
Greece	6	4
Cyprus	6	4
Canada	5	3
Israel	5	3
Spain	5	3
South Africa	5	3
Norway	4	3
Portugal	4	3
Sweden	3	2
New Zealand	3	2
Zimbabwe	3	2
Austria	1	1
Czech Republic	1	1
Macedonia	1	1
Netherlands	1	1
Switzerland	1	1
Poland	1	1
Mauritius	1	1
Total	**149**	**~100**

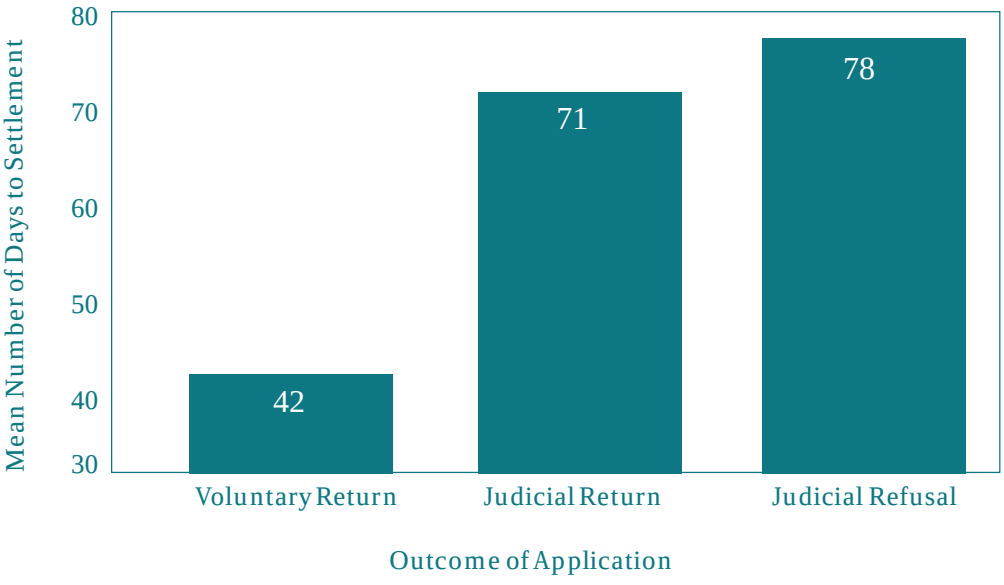
More applications to England and Wales came from the USA than from any other State. Eleven percent of the applications came from Australia, and at 9% each, the States with the third most applications to England and Wales were neighbouring Ireland and France.

7.1.1.2 THE OUTCOMES OF THE APPLICATIONS

Outcome of Application		
	Number	Percent
Rejection	22	15
Voluntary Return	8	5
Judicial Return	76	51
Judicial Refusal	14	9
Withdrawn	19	13
Pending	3	2
Other	7	5
Total	**149**	**100**

The majority of cases resulted in a judicial return, 51%, which is well above the global average of 32%. Conversely, just 5% resulted in a voluntary return which is well below the global average of 18%. This shows that the system in England and Wales is court-based, and arguably does not allow sufficient time for the seeking of voluntary resolutions.[133] Although at 14, the number of judicial refusals is relatively high, the proportion of refusals at 9% is below the global average of 11%. Altogether, 60% of cases went to court, 84% of which ended in a judicial return. Globally, 74% of cases going to court ended in a judicial return. Nineteen cases, 13%, were withdrawn, and further study has shown a variety of reasons for withdrawals, making analysis difficult. A high proportion, 15%, of cases were rejected, compared with a global average of 11%. It has been suggested that in part this may be due to the Central Authority being asked to intervene where children are on stop over flights between States such as the USA and the Middle East. In such cases the chances of catching children would be small. Indeed half of the 22 rejected cases were rejected because the child was actually located in another State. Three of the applications were still pending at 30 June 2001, which may give pause for thought.

7.1.1.3 THE TIME BETWEEN APPLICATION AND FINAL CONCLUSION



[133] Arguably, this is in breach of the Convention. See Armstrong, S. "Is the Jurisdiction of England and Wales Correctly Applying the 1980 Convention on the Civil Aspects of International Child Abduction?" [2002] 51 ICLQ 427.

The prior chart shows that applications to England and Wales were concluded extremely quickly, which highlights the efficiency of the system. The voluntary returns were concluded on average within 42 days, compared with a global average of 84 days. The fact that they were concluded so quickly is not surprising given that cases are rushed to court quickly and therefore if voluntary resolution is to occur it must occur in the first few weeks prior to the court case. The judicial returns were concluded on average within 71 days and the judicial refusals on average within 78 days. These figures compare favourably with the global averages of 107 days and 147 days respectively. The figures relate to the final decision in the case and therefore include appeals. England and Wales was the fastest jurisdiction analysed in this report, and considering the vast case load, this is a great achievement.

The table below shows the minimum and maximum number of days taken to reach conclusion for each of the three outcomes. In addition, it shows the mean and median number of days taken to reach conclusion.

Outcome of Application			
	Voluntary Return	Judicial Return	Judicial Refusal
Mean	42	71	78
Median	18	43	60
Minimum	0	1	23
Maximum	133	570	158
Number of Cases	**8**	**75**	**14**

Only two cases were appealed and these both ended in judicial returns. From application to final judicial hearing, one case took just 49 days but the other took 254 days. The lack of appeals given that so many cases went to court shows that in England and Wales leave to appeal is rarely given in Convention cases. Globally 14% of court cases were appealed.

7.1.2 INCOMING APPLICATIONS FOR ACCESS

7.1.2.1 THE CONTRACTING STATES WHICH MADE THE APPLICATIONS

Requesting States		
	Number of Applications	Percent
Denmark	4	16
Canada	3	12
USA	3	12
Australia	2	8
France	2	8
Italy	2	8
Belgium	1	4
Czech Republic	1	4
Greece	1	4
Netherlands	1	4
Portugal	1	4
Spain	1	4
Sweden	1	4
New Zealand	1	4
Slovenia	1	4
Total	**25**	**100**

It is perhaps surprising that more access applications came from Denmark than from any other Contracting State given that Denmark made no return applications to England and Wales in the same year.

7.1.2.2 THE OUTCOMES OF THE APPLICATIONS

Outcome of Application		
	Number	Percent
Rejection by Central Authority	0	0
Access Voluntarily Agreed	2	8
Access Judicially Granted	5	20
Access Judicially Refusal	0	0
Other	1	4
Pending	4	16
Withdrawn	13	52
Total	**25**	**100**

There were 25 incoming access applications commenced in 1999, of which, 4 were still pending as of 30 June 2001. Over half the applications were withdrawn compared with a global average of 26%. Only seven applications, 28%, ended with access either being ordered or agreed, while globally, 43% of applications for access were so concluded. There were no cases where access was refused. The high number of withdrawn cases and the relatively low number of cases which ended in access being either granted or agreed suggests that the system is not working well.

7.1.2.3 THE TIME BETWEEN APPLICATION AND FINAL CONCLUSION

Timing to Judicial Decision		
	Number	Percent
0-6 weeks	0	0
6-12 weeks	1	20
3-6 months	0	0
Over 6 months	4	80
Total	**5**	**100**

The table above shows the time taken from application to final judicial decision in the access cases. Most cases took over six months to be decided. This contrasts with return cases, which were generally concluded quickly. One of the voluntary agreements was concluded after six months. This also highlights the difference between the expedited Convention system for return applications and the rather slower domestic system under which access applications, domestically referred to as “contact applications”, are decided.

7.2 SCOTLAND

7.2.1 INCOMING APPLICATIONS FOR RETURN

7.2.1.1 THE CONTRACTING STATES WHICH MADE THE APPLICATIONS

Requesting States		
	Number of Applications	Percent
USA	4	40
Australia	2	20
Italy	2	20
Norway	1	10
New Zealand	1	10
Total	**10**	**100**

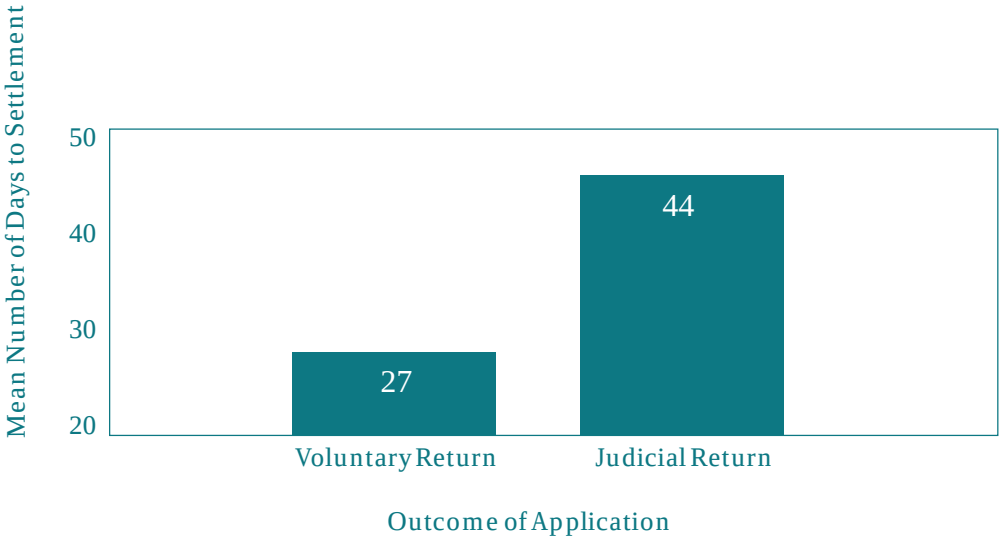
As with applications to England and Wales, Scotland received more applications from the USA than from any other State. Interestingly, only 3 of the 10 applications were from European States.

7.2.1.2 THE OUTCOMES OF THE APPLICATIONS

Outcome of Application		
	Number	Percent
Rejection	0	0
Voluntary Return	8	80
Judicial Return	1	10
Judicial Refusal	0	0
Withdrawn	1	10
Pending	0	0
Other	0	0
Total	**10**	**100**

The table above shows that 8 of the 10 applications received in 1999 ended in a voluntary return. There were the same number of voluntary returns as there were in applications to England and Wales, although England and Wales received 149 applications. This highlights the primary difference between the two systems. Although there is a fast-track system in the Court of Session, the Scottish system encourages voluntary returns, while the system in England and Wales concentrates on getting cases to court quickly. In Scotland, only one case went to court resulting in a judicial return, and the final case was withdrawn. Ninety percent of applications to Scotland resulted in the child being returned, compared with a global average of 50%. This is an extremely high return rate, albeit the numbers are small.

7.2.1.3 THE TIME BETWEEN APPLICATION AND FINAL CONCLUSION



The chart above shows the mean average time taken from application to resolution. The voluntary returns were concluded on average within 27 days. This is incredibly fast and shows that cases are well managed, negotiations not being allowed to continue indefinitely prior to court action. The judicial return took 44 days which is also fast and not far off the Convention target of six weeks.[134]

7.2.2 INCOMING APPLICATIONS FOR ACCESS

Scotland only received three incoming access applications in 1999 and therefore analysis will not be included in this paper. For more detail see Preliminary Document No. 3.[135]

7.3 NORTHERN IRELAND

7.3.1 INCOMING APPLICATIONS FOR RETURN

7.3.1.1 THE CONTRACTING STATE WHICH MADE THE APPLICATIONS

Requesting States		
	Number of Applications	Percent
Ireland	4	67
Germany	1	17
Greece	1	17
Total	**6**	**~100**

Not surprisingly, most applications to Northern Ireland were from neighbouring Ireland. Unlike the other UK jurisdictions, there were no applications from the USA or Australia with all applications coming from European States.

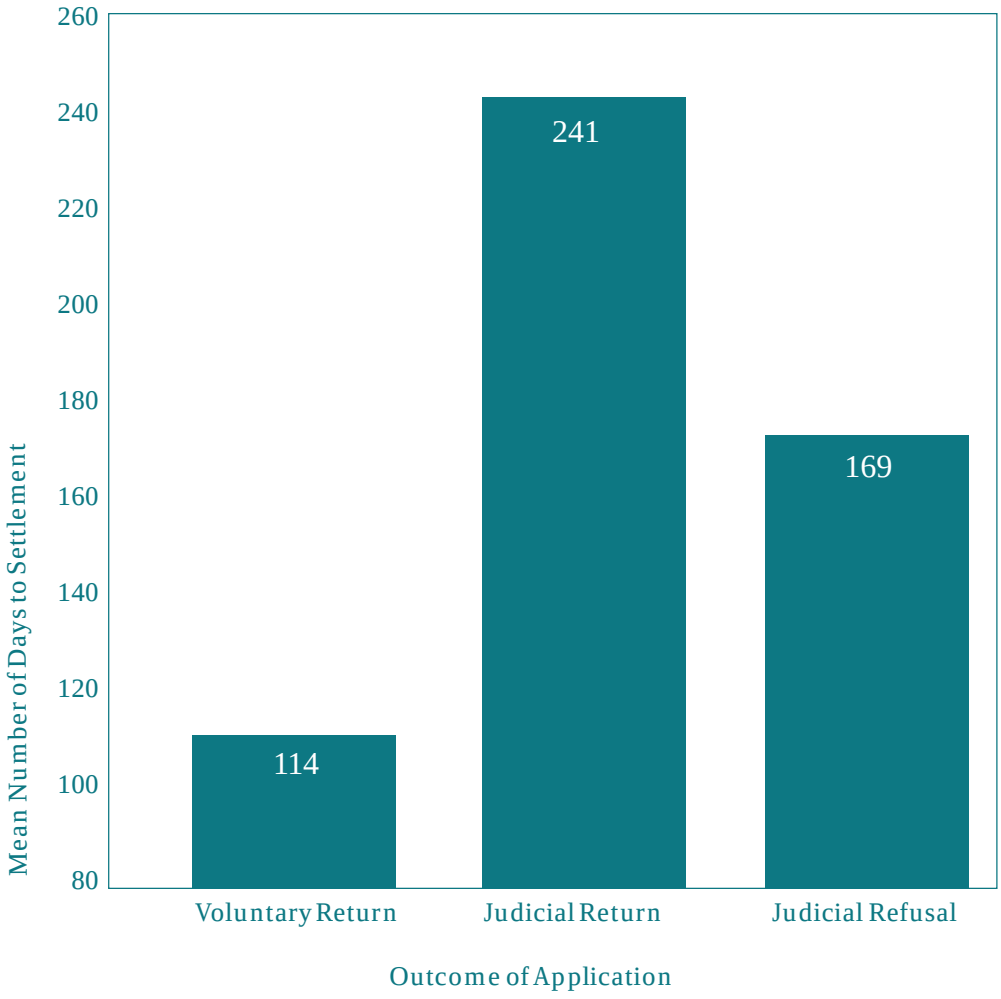
[134] Article 11 (2).
[135] Preliminary Document No. 3, op. cit., n. 33.

7.3.1.2 The Outcomes of the Applications

Outcome of Application		
	Number	Percent
Rejection	0	0
Voluntary Return	1	17
Judicial Return	2	33
Judicial Refusal	2	33
Withdrawn	1	17
Pending	0	0
Other	0	0
Total	**6**	**100**

In Northern Ireland, like in England and Wales there is an emphasis on getting cases to court. This is highlighted in the table above, which shows that four of the six incoming applications to Northern Ireland went to court. Of these two ended in a judicial return and two in a judicial refusal. Only one case was concluded with a voluntary return and the other case was withdrawn. With three cases concluding with the return of the child, the return rate is identical to the global average of 50%. However, numbers are small, and it is also to be noted that only 50% of applications which went to court resulted in a return order compared with 74% globally.

7.3.1.3 The Time Between Application and Final Conclusion



The prior chart shows, that in contrast to England and Wales and Scotland, applications to Northern Ireland were handled slowly. None of the four judicial decisions were the result of appeals and therefore the times shown above relate to first instance decisions. Although numbers were small, the times shown do not compare favourably with the global averages of 107 days for return decisions and 147 days for refusals to return. However, it is worth noting that the figures in 2000 reflect more favourably with three cases resulting in a judicial return in a mean average of 98 days from application to final conclusion. There were no judicial refusals in 2000.[136]

7.3.2 INCOMING APPLICATIONS FOR ACCESS

There was just one incoming access application made to Northern Ireland in 1999. This case was rejected by the Central Authority as the child was located in another country. For further information see Preliminary Document No. 3.[137]

8. CONCLUSIONS

8.1 THE UK

In terms of the number of applications handled, the UK is second only to the USA. Indeed the UK handled 18% of global applications in 1999.[138] As the fifth State to ratify the Convention, and dealing with a vast caseload, the UK is a greatly experienced Convention State.

The UK is also highly acclaimed in terms of the way in which it operates the Convention. With reference to the busiest jurisdiction of England and Wales, Beaumont and McEleavy have commented that "the Convention can and largely does operate efficiently … coming close to the expectation of the drafters".[139] It has also been suggested that the jurisdiction "stands out as the model Convention country".[140] Notwithstanding the reservation made to Article 26, free "legal representation" is provided to all applicants requesting return, with no means or merits test, and translation of all relevant documents is also provided free of charge. Given the vast number of cases in the UK, the provision of legal aid is extremely generous. However, with the exception of Scotland, legal aid is not provided in access applications.

Jurisdiction in Convention cases is limited to a certain number of courts and judges. The courts empowered to hear Convention cases are high level courts and therefore decisions are generally reported. As a consequence of this, there is a vast volume of jurisprudence "covering almost every aspect of the Convention".[141] The high level of court also "attracts talented barristers which in turn has led to searching examination of the text of the Convention".[142] Oral evidence in Convention cases is also strictly limited and while this inevitably

[136] Information received from the Northern Irish Central Authority in 2002.
[137] Preliminary Document No. 3, op. cit., n. 33.
[138] See ibid. The figure quoted refers to data received at the time of writing, although we believe that this data relates to over 90% of possible Convention applications in that year and as such is relatively accurate.
[139] Beaumont and McEleavy, op. cit., n. 2, p. 261.
[140] Lowe, N and Douglas, G. *Bromley's Family Law* 9th Edition 1998 Butterworths, p. 510.
[141] Lowe, op. cit., n. 27.
[142] Ibid., p. 189.

helps to expedite hearings, there have been cases where the court has ordered return of the child in ignorance of their strong objections.[143]

Another potential drawback of the expedited, court-based system in England and Wales, and Northern Ireland (but not in Scotland), is that there is little opportunity to seek a voluntary resolution, as required in Article 7 (c), and Article 10 of the Convention. In the absence of research on the effect on children post return, it is submitted that voluntary agreements may lead to better communication between the parties to the benefit of post return litigation.[144] While England and Wales has established a system which allows for expeditious return of children it has perhaps neglected the potential benefits to be gained from seeking voluntary resolution. The mediation project pioneered by Reunite may go some way to redressing this balance. As the system in Scotland shows, seeking voluntary return does not necessarily have to delay the court procedure.[145]

The UK takes an active role at international conferences on child abduction, producing a number of Working Documents for the Fourth Special Commission of the Convention in March 2001. Judges in the UK have also received training in application of the Convention and have been present at judicial conferences, notably, the Anglo-German Judicial Conference in 1997, and the Washington Judicial Conference held in Washington, DC, in September 2000.

The charity Reunite, is a leading organisation in the field of child abduction. It has produced useful publications[146] particularly with regard to preventing abductions, and is involved in training practitioners in the UK. Reunite was also directly involved in establishing the European Network on Parental Child Abduction.

Reunite's web site contains useful information.[147] The Foreign and Commonwealth Office also has a web site with useful information for parents particularly if their children have been abducted to non-Hague Convention countries.[148]

The Port Alert System operating in the UK to prevent the removal of children is a useful tool. Similarly, the law introduced in October 1998, preventing children from being put on adults passports has been useful in making it harder for potential abductors to remove children from the UK.

The UK has become slow to accept accessions and slow to publish the status of the Convention with regards to new Contracting States. Turkey's ratification in 2000 and Slovakia's ratification in 2001 were for example not recorded in UK internal legislation until December 2001.[149] Similarly, while the Convention has been extended to the Dependent Territories of Bermuda and Montserrat as stated on the Hague web site,[150] there is at present no internal Statutory Instrument recognising these extensions.

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[143] See ante at 3.5.
[144] Beaumont and McEleavy, op. cit., n. 2, p. 246.
[145] See ante at 7.2.1.3., and also Preliminary Document No. 3, op. cit., n. 33.
[146] See *http://www.reunite.org*
[147] Ibid.
[148] *http://www.fco.gov.uk/travel/dynpage.asp?Page=351*
[149] Child Abduction and Custody (Parties to Conventions) (Amendment) Order 2001 SI 2001/3923.
[150] *http://www.hcch.net/e/status/stat28e.html#uk*

8.2 ENGLAND AND WALES

The Central Authority for England and Wales handles more applications than any other, the USA having split incoming and outgoing applications between two separate bodies. The Central Authority with a limited staff and a limited budget is particularly efficient and offers great expertise with a small staff who deal solely with international child abduction issues. The concentration of jurisdiction in a small specialised high level court has led to great experience and the specialisation of solicitors also aids expertise and sound advice. The Central Authority has a web site attached to the Official Solicitors web page.[151] It contains information on child abduction issues and includes copies of the application forms needed to apply under the Convention. Nevertheless, this web site is not as useful as those of some other States, notably, Australia, Canada and USA, in terms of informing parents about different procedures in different countries.

The system in practice operates efficiently in returning children. In 1999, of the 149 incoming return cases, 76 ended with a judicial return. The exceptions to return are narrowly construed nevertheless, there were 14 cases which resulted in a judicial refusal in that year. Consequently, 84% of cases going to court ended in a judicial return. All these court cases were handled relatively quickly with return decisions taking a mean average of 71 days from application to conclusion and refusals taking a mean average of 78 days. Both of these figures compare favourably with the global averages for the same year of 107 and 147 days respectively. Nevertheless, it is to be noted that three applications were still pending at 30 June 2001. There was a high proportion of withdrawn and rejected applications in 1999. Conversely, there was a small proportion of cases which resulted in a voluntary return. As stated above, the system in England and Wales does not prioritise the seeking of voluntary resolution and this is highlighted by the statistical research which shows a voluntary return rate of just 5% compared with a global rate of 18%. Overall, the system in England and Wales does appear to be operating well, 56% of cases resulting in the return of the child, and all cases being handled quickly.

The outlook for access cases was less optimistic with only 7 of the 25 cases ending with access being granted or agreed, these cases also tended to take more time and there were 4 cases still pending at 30 June 2001. This again highlights the efficiency of the Convention system under which return applications are handled compared with the domestic system which processes access applications.

8.3 SCOTLAND

The legislature has been aware of the Convention when drafting national legislation[152] in order to clarify the position of parents and others not only in national law but also in the international field. This shows a respect for the Convention and is a useful way of ensuring that the Convention is able to operate effectively. Scotland has recognised the duty on Central Authorities to seek the voluntary return of the child[153] and sends out a letter with each application

[151] *http://www.offsol.demon.co.uk/caunitfm.htm*
[152] See the Children (Scotland) Act 1995 s 2 (3) and Schedule 4, paragraph 37.
[153] See Article 7 (c) and Article 10 of the Convention.

instructing the solicitor in the case to seek voluntary resolution. This has led in 1999 to 80% of cases resulting in a voluntary resolution of the issues. Not only does this decrease costs to the State in keeping proceedings outside of court but it may also help the parents to come to agreements in preparation for the court hearing in the State of the child's habitual residence.

Scotland is generous with regard to legal aid, providing non-means and non-merits tested funding to all applicants not just for return applications like the other UK jurisdictions, but also for access. Since the procedural changes in early 1996, cases have been handled more expeditiously, however, there have been some concerns that because Article 13 defences are hard to establish in the Scottish system, those with genuine defences may not be given the opportunity to plead them. The current need to instruct a solicitor in the area where the child is believed to be and then for that solicitor to instruct another in Edinburgh for the Court of Session may seem unnecessary.[154]

Like England and Wales, Scotland does not seem to fully make use of the Internet to promote awareness of child abduction issues and to inform those concerned about child abduction. Nevertheless, overall, Scotland appears to have implemented the Convention successfully. Voluntary returns are encouraged, the court system is expeditious and legal aid is generous. Albeit that there are few Convention applications in Scotland, the system is effective.

8.4 NORTHERN IRELAND

Like the other jurisdictions in the UK, Northern Ireland does not make much use of the Internet. However, we understand that a web site which will contain information on international child abduction is currently under construction.

In 1999 there was a high proportion of judicial refusals given that two out of four cases going to court resulted in a refusal to return. As the numbers involved are small, it is difficult to draw any meaningful conclusions from this data. However, it can be said that cases were generally handled slowly, despite the limited jurisdiction and the Anglo-based system of passing applications to a solicitor swiftly.

9. SUMMARY OF CONCERNS

- Voluntary resolutions are not prioritised in the systems in England and Wales and Northern Ireland.
- Northern Ireland court cases decided slowly.
- Because of the emphasis on speed and the limited right to make oral representations before the courts, return orders are occasionally made in ignorance of a child's views.
- "Legal representation" is only available on a means and merits basis to pursue access applications before the courts in England and Wales and Northern Ireland.
- Delays in seeking "legal representation" to pursue access applications before the courts in England and Wales.
- The Internet is not used to its full potential.

[154] It seemed at one stage that this would be examined (see National Report for Scotland, op. cit., n. 24), but we now understand that this is not the case, partly on the basis that it is thought to be beneficial to have a local solicitor.

10. SUMMARY OF GOOD PRACTICES

- Free legal representation to all applicants in return proceedings.
- In Scotland legal aid offered to all applicants in access applications pursued under the Convention.
- Free translations of all necessary documentation.
- Expedited court systems, applications in England and Wales and Scotland particularly are handled quickly.
- Convention cases limited to high level, and in the case of England and Wales, specialist family courts.
- Limited and therefore experienced practitioners involved in Convention cases.
- In England and Wales, use of CAFCASS officers who are familiar with the Convention and are present in the same building as the court, to interview children where required.
- Efficient Central Authorities.
- Scotland seeks voluntary resolutions and in 1999, 8 out of the 10 return cases they received were concluded with a voluntary agreement.
- The Association of Chief Police Officers in Scotland has produced a booklet which details appropriate police procedure when faced with abduction or potential abduction. This booklet has been circulated to all police forces in Scotland in order to ensure that information is available and practice is consistent.
- Reunite as a leading child abduction charity.

APPENDIX

As of 1 March 2002, the Convention is in force between the following 54 Contracting States and the United Kingdom.

Contracting State	Entry into Force
ARGENTINA	1 JUNE 1991
AUSTRALIA	1 JANUARY 1987
AUSTRIA	1 OCTOBER 1988
BAHAMAS	1 MARCH 1994
BELGIUM	1 MAY 1999
BELIZE	1 OCTOBER 1989
BOSNIA AND HERZEGOVINA	1 DECEMBER 1991
BURKINA FASO	1 NOVEMBER 1992
CANADA	1 AUGUST 1986
CHILE	1 JULY 1994
CHINA-HONG KONG SPECIAL ADMINISTRATIVE REGION	1 SEPTEMBER 1997
CHINA-MACAU SPECIAL ADMINISTRATIVE REGION	1 MARCH 1999
COLOMBIA	1 DECEMBER 1996
CROATIA	1 DECEMBER 1991
CYPRUS	1 FEBRUARY 1995
CZECH REPUBLIC	1 MARCH 1998
DENMARK	1 JULY 1991
ECUADOR	1 JUNE 1992
FINLAND	1 AUGUST 1994

Former Yugoslav Republic of Macedonia	1 December 1991
France	1 August 1986
Georgia	1 December 1997
Germany	1 December 1990
Greece	1 June 1993
Honduras	1 May 1994
Hungary	1 September 1986
Iceland	1 January 1997
Ireland	1 October 1991
Israel	1 December 1991
Italy	1 May 1995
Luxembourg	1 January 1987
Malta	1 March 2002
Mauritius	1 September 1993
Mexico	1 October 1991
Monaco	1 April 1993
Netherlands	1 September 1990
New Zealand	1 October 1991
Norway	1 April 1989
Panama	1 July 1994
Poland	1 February 1993
Portugal	1 August 1986
Romania	1 April 1993
Saint Kitts and Nevis	1 August 1994
Slovakia	1 February 2001
Slovenia	1 June 1994
South Africa	1 December 1997
Spain	1 September 1987
Sweden	1 June 1989
Switzerland	1 August 1986
Turkey	1 August 2000
Turkmenistan	1 May 1998
United States of America	1 July 1988
Venezuela	1 January 1997
Yugoslavia	1 December 1991
Zimbabwe	1 October 1995

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